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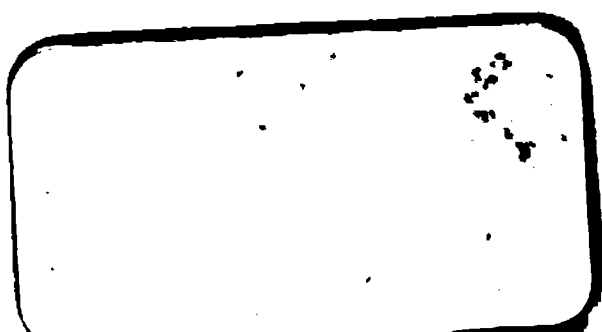
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MODERN PRECEDENTS

IN

CONVEYANCING;

WITH

VARIATIONS

ADAPTING THEM TO DIFFERENT CIRCUMSTANCES OF TITLE:

AND

COPIOUS EXPLANATORY AND PRACTICAL NOTES,

ON THE NATURE AND USE OF THE PROVISIONS CONTAINED IN THEM.



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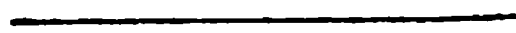
INCLUDING

**DIRECTIONS FOR THE SOLICITOR IN ALL MATTERS CONNECTED
WITH EACH ASSURANCE.**



BY CHARLES BARTON,

**OF THE INNER TEMPLE, ESQ. BARRISTER AT LAW, AUTHOR OF THE ELEMENTS
OF CONVEYANCING.**



Validiora sunt exempla quam verba, et plenius opere docetur quam voce.



VOL. VII.

COPARTNERSHIPS, MARRIAGE SETTLEMENTS, AND WILLS.



LONDON:

**PRINTED FOR CHARLES HUNTER, LAW BOOKSELLER,
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C O N T E N T S

OF

VOLUME VII.

CLASS VI.

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MODERN PRECEDENTS
IN
CONVEYANCING.

CLASS VI.

DEEDS AND ASSURANCES RELATIVE TO
COPARTNERSHIPS.

No. I.

*An Agreement for a Copartnership between two
Persons to commence at a future Time (1).*

Variations where there are several Parties, &c. (2).

ARTICLES OF AGREEMENT made and entered
into this day of , in the year of our

COPART-
NERSHIP.

*Agreement for
future
Copartnership.*

(1) An agreement for a future copartnership, whether by
parol or in writing, will be binding upon the parties, and sup-
port an action at law for damages, or a bill in equity for a spe-
cific performance, in case either party shall refuse to perform it,
if it be definite, certain, and reasonable; see *Buxton v. Lister, et
al.* 3 Atk. 383; also *Anon.* 2 Ves. jun. 629; *Hercey v. Birch,*
9 *ib.* 357; but not otherwise; see *Walker v. Harris,* 1 Anstr. 245;
also *Akhurst v. Jackson,* 1 Swans. 85.

*Agreement may
be by parol.*

(2) See also notes and variations to No. III. *post*, p. 13, *et seq.*
in margins.

into copartnership together in the trade or business of _____, and sign, seal, and deliver proper deeds or other instruments in writing, to be prepared or approved by some practising conveyancer, of the degree of a barrister, to carry the same into effect; In which said deeds or instruments, or in some or one of them, it shall be provided and declared, THAT the said copartnership shall commence upon the said _____ day of _____, and continue for the space or term of _____ years thence next ensuing, if the said parties shall so long live, under the firm of _____, and be carried on at _____; THAT the capital stock shall consist of £ _____; THAT if either party bring in a further capital or leave his share of the profits in the trade, the capital stock shall be liable to make good the same, with interest after the rate of £5 per cent. per annum; THAT each party shall have a separate estate in the capital stock and the proceeds thereof, without survivorship between them (1); THAT the copartnership stock shall be employed solely for the joint trade; THAT the profits and loss thereof shall be borne by each of the parties in proportion to his capital therein; THAT the stock in trade, and other insurable property, shall be insured at the expense of the joint

**COPART-
NERSHIP.**

*Agreement for
future
Copartnership*

*Covenants, &c.
to be contained
in the deed of
copartnership.*

(1) If the copartnership be between professional men, the business (so far as regards the good-will) shall survive on the death of either of the parties unless otherwise provided; *Farr v. Peace*, 3 Mad. 74; but it seems to be questionable, whether this would be the case in respect of the good will of a trade, and see *post*, p. 25, notes.

**COPART-
NERSHIP.**

*Agreement for
future
Copartnership.*

trade; THAT all expenses and casual losses shall be borne by the parties, in proportion to their respective interests; THAT clerks and servants shall not be taken or discharged, but by mutual consent; THAT neither party shall take apprentices without the consent of the other; THAT the premiums with apprentices shall be added to the joint stock; THAT entries shall be made in proper books, of all the copartnership transactions and affairs; THAT the copartnership books shall be kept at the counting-house where the business is carried on, and be open for the inspection of all parties, and shall not be removed from thence, unless to be produced in court; THAT half-yearly rests shall be made in the accounts of the joint trade, and signed by the parties respectively; THAT the surplus of the proceeds, after payment of expenses, shall be divided between the parties at Christmas in every year, in proportion to their respective interests; THAT the parties shall diligently employ themselves in the business of the joint trade, and not be concerned in any other trade; THAT they will be faithful to each other in all the copartnership concerns; THAT neither of the parties shall apply the partnership monies to his own use, except the annual sum of £ by way of subsistence-money; THAT each party shall be allowed his reasonable expenditures upon customers; THAT neither party shall suffer the copartnership estate to be charged with his private debts; THAT neither party shall buy or sell on the copartnership account beyond a certain amount;

THAT neither party shall accept or give bills of exchange, or other securities, but in regular course of trade ; THAT neither party shall lend or give credit; NOR compound or release debts, NOR become bail, NOR engage in speculative enterprises, without the consent of the other ; THAT neither party shall dispose of his share, except by will, without the consent of the other ; THAT if either party conduct himself contrary to the provisions therein contained, the partnership shall be void ; THAT either party shall have liberty to quit the partnership, on giving twelve months' notice ; THAT on the death of either party before the first half-yearly settlement of accounts, his capital shall be returned, and the profits and loss accrue to and be borne by the survivor ; THAT on the death of either party after the first half-yearly settlement, the other shall take the stock, the amount of which shall be paid by instalments, to be secured by bond with sureties, upon the representatives of the deceased party assigning his share of the stock ; THAT at the expiration of the copartnership term, each of the parties in turn shall have the refusal of the stock at a valuation, and if both parties refuse, it shall be sold by auction ; THAT credit given after the end of the partnership shall be at the risk of the person crediting ; THAT disputes shall be referred to arbitration ; THAT, &c. (1). AND lastly, that each party will execute

COPART-
NERSHIP.

*Agreement for
future
Copartnership.*

(1) Here insert such other agreements between the parties relative to the terms and conditions of the copartnership, as

Stipulations to
be set out.

**COPART-
NERSHIP.***Agreement for
future
Copartnership.*Reference of
differences to
arbitration.

further assurances, if requisite. AND in such deed or deeds so to be prepared as aforesaid shall also be contained all such other covenants, provisos, conditions, stipulations, clauses, and agreements, as are usually inserted in deeds or instruments of copartnership between persons of the same or a like trade or business, or which in the opinion of counsel shall be necessary or proper for the purpose of carrying the true intent and meaning of the parties hereto into execution; the expenses of which said deeds or instruments, and of all matters preparatory or otherwise relating to the same, shall be borne by them the said (*parties*) in equal proportions. AND it is hereby further agreed and declared by and between the parties hereto, that in case any doubt, difference of opinion, or question, shall hereafter arise between them, with respect to the carrying these presents into effect according to the true intent and meaning thereof, or relative to this present clause or agreement, the same shall be referred to and be decided by two counsel in the law (1), of the degree of barrister, one to be named by each of the said parties; and in case of difference between them, then by or with the assistance of a third

differ in any respect from the common and usual covenants between copartners of similar trades; for which see *post*, No. III. p. 20, *et seq.* in the margins and variations there.

Reference to
arbitration.

(1) Instead of this reference to counsel, it may be to other referees, according to the usual course of arbitration, if preferred by the parties, for the form of which reference, see *post*, No. III. p. 72, also a shorter form, No. IV.

counsel to be by such two counsel named, and the opinion of such two counsel to be so first named, or of such third counsel, or of any two of them, shall be binding and conclusive upon each of the parties hereto, and their respective executors and administrators, and by them respectively submitted to accordingly without further controversy; and which said reference shall be by mutual bonds and such other reciprocal stipulations as are usual or proper in similar cases (1). IN WITNESS whereof the parties hereto have interchangeably set their hands and seals (2) the day and year first above written.

COPART-
NERSHIP.

*Agreement for
future
Copartnership.*

(1) This clause of reference, if thought requisite, may be more fully set out, as in No. III. p. 72.

Form of
reference.

(2) It is not necessary that articles of agreement should be sealed, but by being sealed they will sustain an action of covenant against either party neglecting to perform them, should such action be deemed preferable to that of assumpsit.—See *Walker v. Harris*, 1 Anstr. 245.

Sealing of
articles not
necessary.

between the said parties relative to the concerns of the said copartnership, they have agreed to dissolve and discontinue the same from the day of now next ensuing, and that the said *(one party)* shall retire from the said joint trade upon the terms and conditions hereinafter mentioned.

**COPART-
NERSHIP.**

*Agreement for
future
Dissolution.*

Of differences.

NOW THEREFORE THESE PRESENTS WITNESS, that each of them the said *(copartners)* doth hereby for himself, his heirs, executors, and administrators, covenant, declare, and agree to and with the other of them, his executors and administrators, in the manner following, (that is to say) that the said copartnership now subsisting between them the said *(copartners)* under or by virtue of the said in part recited indenture, or otherwise howsoever, shall be dissolved and determined, and be made utterly void and of no effect, upon and after the

WITNESS,
agreement to
dissolve the co-
partnership on
a given day.

day of next ensuing the date of these presents, up to which time all accounts whatever relating to the said copartnership shall be fully made up, balanced, and finally settled, by and between them. AND that on or before the said

Proper deeds,
&c. to be pre-
pared.

day of , a proper deed or deeds of dissolution, and other instrument or instruments in writing, to be prepared or approved by some eminent conveyancer, of the degree of a barrister, shall be executed by the said parties for the purpose of carrying these presents into effect. AND it is further agreed, that in such deeds or instruments, or some or one of them, there shall be contained a covenant or other assurance on the part of the said *(continuing copartner)* for payment

Covenants, &c.
to be contained
in the deed.

**COPART-
NERSHIP.**

*Agreement for
future
Dissolution.*

of a clear and certain annuity (1) of £ per annum unto the said (*retiring copartner*) during the natural lives of them the said parties (*or as agreed*). AND also shall contain an assignment by the said (*retiring copartner*) of his share and interest in the stock in trade and effects of the said copartnership (2); together with a letter of attorney to authorise the said (*continuing copartner*) to receive the same, and use the name of the said (*retiring copartner*) for that purpose; AND also covenants on the part of the said (*retiring copartner*) that he has not released nor incumbered his share of the said copartnership stock; and that he will assist the said (*continuing copartner*) in the recovery thereof; AND that he will not use any means to obtain custom or business from the said (*continuing copartner*); nor carry on the trade or business of for the space of years, within

Annuity.

(1) See various terms of retirement, *post*, No. III. p. 60, *et seq.*; and it may here be observed, that where the consideration for retirement be an annuity (*as above*) it is imprudent (although often done) to make the annuity proportioned to the growing profits of the business; for as this makes the retiring partner's interest depend upon the fluctuation of profit and loss, it will be construed to be a continuation of the copartnership, and within the 21 Ja. 1, c. 19, s. 11; see *ex-parte* Colbeck, 1 Buck. 48.

**Assignment of
effects.**

(2) Notwithstanding an agreement for a retiring partner to assign his copartnership stock, &c. yet whilst the agreement remains executory, the property continues a joint estate; *ex-parte* Wheeler, 1 Buck. 25; it therefore behoves the solicitor for such party to lose no time in completing the transaction by an actual assignment, lest a bankruptcy should intervene; and see *ante*, INTRODUCTION.

miles from the place where the said joint trade is now carried on (1); AND that he will enter into all necessary instruments and other assurances for carrying the purposes aforesaid into effect. AND also a covenant by the said (*continuing copartner*) that he will pay all debts and demands of or upon the said joint trade, and indemnify the said (*retiring copartner*) against the same (2). AND also, &c. (3). Together with all such other covenants, provisos, conditions, stipulations, declarations, and agreements, as usually are, or ought to be inserted in deeds or instruments of dissolution of copartnership between persons of the same or a similar trade or business. AND it is hereby also agreed, that all costs, charges, and expenses of preparing the said deeds or instruments, and other matters and things relating thereto, shall be borne and paid by the parties hereto, in equal proportions.

COPART-
NERSHIP.

Agreement for
future
Dissolution.

(1) It may be here noticed, that a covenant not to carry on a particular trade extends to the partially dealing in it, as well as to the carrying it on in a public shop; *Doe v. Spry*, 1 Bar. and Ald. 617; and where the restriction is from carrying on the business within a given distance, such distance is to be computed by admeasurement of the shortest foot-path, and not by birds' flight distance, *Wood v. Dennett*, 2 Star. 89.

Restriction as to
carrying on
trade.

(2) The covenant between copartners on a dissolution of copartnership, that the continuing party shall pay the debts, &c. will not, in the event of a bankruptcy of such party, exempt the retiring party from liability, on account of joint debts previously incurred; hence the necessity of an indemnifying stipulation; and see *ex-parte Freeman*, 1 Buck. 471; *ex-parte Williams*, *ib.* 13.

Debts.

(3) Here enumerate such other provisions as may have been agreed upon between the parties, a variety of which may be found *post*, No. III. p. 52, *et seq.* and No. XIII.

Other stipula-
tions.

COPART-
NERSHIP.

*Agreement for
future
Dissolution.*

Reference to
arbitration.

AND it is hereby further agreed and declared by and between the parties hereto, that in case any doubt, difference of opinion, or question, shall hereafter arise between them with respect to the carrying these presents into effect, according to the true intent and meaning hereof, or relative to this present clause or agreement, the same shall be referred to and be decided by two counsel in the law of the degree of barrister, one to be named by each of the said parties hereto, and in case of difference between them, then by or with the assistance of any third counsel to be by such two counsel named, and the opinion of such two counsel so to be first named, or of such third counsel, or of any two of them, shall be binding and conclusive upon each of the parties hereto, and their respective executors and administrators, and by them respectively submitted to accordingly, without further controversy, and which said reference shall be by mutual bonds and such other reciprocal stipulations as are usual or proper in similar cases(1). IN WITNESS, &c.

Clause of
reference.

(1) This clause of reference may be more fully set out, if thought requisite, as *post*, No. III. p. 72, or No. IV.

COPART-
NERSHIP.

*Deed of
Copartnership.
(Full Form.)*

No. III.

*A Deed of Copartnership between two Persons
either as wholesale or retail Traders.**Variations where the Partners consist of several Persons.**Where one of the Parties is an incoming Partner.**Also where the Parties have mercantile Concerns
abroad.**Other Variations as in Margins below.*

THIS INDENTURE (1), of parts, made the

(1) It is not necessary in order to constitute a copartnership that the contract should be by indenture, nor even that there should be a written agreement between the parties, their acting together as copartners being alone sufficient to bind them in that character with respect to third persons; see *Young v. Axtell*, cited *Wats. Copartnership*, p. 6; *Teed v. Elworthy*, 14 East, 210; *Crawshay v. Collins*, 15 Ves. jun. 226. But in order that there may subsist a proper understanding between each other, with respect to their proportion of the profits, and other matters relative to the copartnership connexion, it is evidently proper that their reciprocal engagements should be reduced into writing. A copartnership, moreover, without writing, and for an indefinite period (of which it would be difficult to prove the contrary) may be dissolved by either party at pleasure, *Featherstonehaugh v. Fenwick*, 17 Ves. 298, the consequence of which (if the parties were hostile) would be a general sale of all the joint property, without a preference to either party to take the share of the other, for want of which, or of other beneficial arrangements, an established concern might be wholly destroyed by the malevolence of either of the copartners; and see *ante*, INTRODUCTION.

Copartnership
need not be in
writing.

COPART-
NERSHIP.Deed of
Copartnership.
(Full Form.)

day of in the year of the
reign, &c. and in the year of our Lord .
BETWEEN (*one copartner*) of, &c. of the one
part, and (*other copartner*) of, &c. of the
other part (1). WHEREAS (2) the said (*copartners*)

Several parties.

(1) If there be several persons entering into copartnership, each of them may be made as of a separate part; as to the number of partners allowed to be in copartnership, see *ante*, p. 2, n. (1).

Recital of
previous agree-
ment for co-
partnership.

(2) If the deed be entered into in consequence of a previous agreement in writing, such agreement may be here recited, in order to show the conformity of the present deed; but this is not necessary, as the parties are not finally bound by the articles, but they mutually agree to depart from them; such recital may be thus:

“ WHEREAS by articles of agreement, bearing date on or about the day of which was in the year , and made or expressed to be made between the same persons as are parties hereto, the said (*copartners*) agreed to become copartners together in the trade of , from the day of then next, for the term of years, with a capital of £ upon the terms and conditions, and under and subject to the rules, regulations, and agreements therein mentioned, and in these presents more fully expressed.”

New partner
admitted into
original firm.

If the deed be executed upon a new partner being admitted into an original firm, say,

“ WHEREAS the said (*original partners*) have heretofore carried on the trade or business of in copartnership. AND WHEREAS in consideration of the sum of £ agreed to be paid to them by the said (*incoming partner*) and of the trust and confidence they repose in his diligence and integrity, they have agreed to admit him into copartnership with them in the said trade for the space of years, if he shall so long live, upon the terms and conditions hereinafter expressed. AND WHEREAS upon the treaty

in consideration of the mutual confidence they repose in each other, and in order to extend their

COPART-
NERSHIP.

*Deed of
Copartnership.
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for the said partnership, it was agreed that the said (*incoming partner*) should also pay unto the said (*former partners*) one-third part of the value of the stock in trade, to be ascertained by two indifferent persons, one to be chosen by the said (*former partners*) and the other by the said (*incoming partner*), and that thereupon one-third part of such stock in trade should become the property of the said (*incoming partner*), in common with the others of them.

AND WHEREAS the said stock in trade and other effects have been appraised in the manner aforesaid, and have been valued at the sum of £ , with which the said parties are fully satisfied. NOW THIS INDENTURE WITNESSETH,

that for and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency, to the said (*former partners*) in hand well and truly paid by the said (*incoming partner*) upon the sealing and delivery hereof, being one full and equal third part of the said sum of £ , the amount of such valuation as aforesaid, for the purchase of one-third part of the stock in trade and effects aforesaid, the receipt whereof the said (*former partners*) do hereby acknowledge, [and of and from the same do acquit, release, exonerate, and for ever discharge the said (*incoming partner*) his executors and administrators, by these presents].

Assignment of
third of the
stock in trade
to incoming
partner.

THEY the said (*former partners*) HAVE granted, bargained, sold, assigned, transferred, and set over, and by these presents Do, and each of them BOTH grant, bargain, sell, assign, transfer, and set over unto the said (*incoming partner*) his executors, administrators, and assigns, one full third part or share (the whole into three equal third parts or shares being considered as divided) of and in ALL and singular the houses, out-houses, buildings, barns, stables, goods, utensils, stock, debts, stock in trade, and other effects whatsoever, mentioned and set forth in the inventory or schedule hereunto annexed, with all and every the appur-

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NERSHIP.

*Deed of
Copartnership.
(Full Form.)*

connexions in business, have agreed to become copartners in the said trade or business of (1), for such period of years, upon such terms and conditions, with such capital, and under and subject to such provisos, declarations, regulations, and agreements, as are hereinafter contained or expressed concerning the same. AND WHEREAS for

To hold to the
incoming
partner.

tenances whatsoever to the said property and premises belonging, or in any wise appertaining, or reputed or deemed so to be, or with the same or any part thereof now or heretofore holden, used, occupied, or enjoyed. TO HAVE AND TO HOLD the said one-third part or share, of and in the said houses, buildings, goods, utensils, debts, stock in trade, effects, and premises hereby assigned, or intended so to be, with the appurtenances, unto the said (*incoming partner*) his executors and administrators, as and for his and their own proper goods, chattels, and effects, in copartnership and common with the said (*former partners*) upon and subject to the terms, restrictions, and agreements hereinafter expressed concerning the same. AND THIS INDENTURE FURTHER WITNESSETH," &c. *as above*.

But quære, whether the chattel interests of original copartners, used for the trade, are not incident to it, and an assignment unnecessary; see *Foster v. Hale*, 5 Ves. jun. 308.

What trades
may be carried
on in copartner-
ship.

(1) All trades which it is lawful to carry on individually may be carried on in copartnership, except as to some restrictions provided by the legislature in favour of particular chartered companies, and companies falling within the 6 Geo. 1, cap. 18, against undertakings tending to the common grievance of his majesty's subjects, for which see *post*, No. VIII. and *Rex v. Webb* and others, 14 East, 406, and cases there cited; also *Knowles v. Haughton*, 11 Ves. 168.

Merchants.

If the parties are merchants, it may be added,

"And other trades, merchandise, and concerns, as well in or elsewhere within the united kingdom, or beyond the seas, in which they or either of them now are, or is, or shall or may be employed or engaged."

the better carrying on the said joint trade, the said parties on the treaty for the said copartnership agreed to bring into the same the sum or value of £ , as and for their capital or joint stock, in the shares and proportions following, that is to say, the said (*one copartner*) the sum of £ , and the said (*other copartner*) the sum of £ , and they have accordingly this day respectively paid into the house of Messrs. and Co. bankers in the sum of £ , part of the said respective sums to their joint account, and have secured to the satisfaction of each other the payment of the residue of the said sums, on or before the day of next ensuing the date hereof. [AND WHEREAS it hath been agreed, that the lease of the house and premises at , where the said business is now carried on by the said (*one partner*) shall be considered and taken as part of the copartnership stock, and be assigned to or otherwise vested in the said parties as tenants in common, for the use and purposes of the said joint trade, and which hath accordingly been effected by indenture already prepared and engrossed, and bearing or intended to bear even date herewith, and made or intended to be made between the same parties as are parties hereto (*or as the case may be*)(1).] Now THIS INDENTURE WITNESSETH, that in pursuance [and part performance] of the said agreement,

COPART-
NERSHIP.*Deed of
Copartnership.
(Full Form.)*Lease of pre-
mises to be part
of the capital.WITNESS,
that the parties
become copart-
ners.

(1) See the form of such assignment, *post*, No. XIII. rider (A), also 1 WILD. SUP. No. XXIX.

COPART-
NERSHIP.

*Deed of
Copartnership.
(Full Form.)*

each of them the said (*copartners*) for himself, his heirs, executors, and administrators, Doth hereby covenant (1), declare, and agree with and to the other of them (2), his executors, administrators, and assigns, that they the said (*copartners*) have become, and under and by virtue of these presents, do become and shall and will be, and continue copartners together in the said trade or business of (3), and in all transactions,

Reciprocal
covenants.

(1) The reciprocal stipulations between the parties are put in the form of covenants, in order that an action of covenant may be supported on the deed in case they should be broken. But where (as in companies of proprietors) there are so many parties, as to render it inconvenient to name them all in an action, which in most cases is necessary, *Graham v. Robertson*, 2 Durnf. and E. 282, all the members except two or three, may be made to covenant with those three, and those three with a certain number of the other members, in which case say,

“Each and every the parties hereto, except the said for himself, his heirs, executors, and administrators, doth hereby covenant, declare, and agree, with and to the said (*excepted members*) respectively, and their respective executors and administrators, jointly and severally; and each of them the said (*excepted members*) doth hereby for himself, his heirs, executors, and administrators, covenant, declare, and agree, with and to the said (*two or three of the other members*) respectively, and their respective executors and administrators, jointly and severally, THAT,” &c. *as above*.

Several parties.

(2) If there be three or more copartners, say,

“With and to each and every of the other and others of them, and their respective executors and administrators.”

In what trades
there may be
copartnership.

(3) Any trade, &c. not prohibited by law, (for which see *Biggs v. Lawrence*, 3 Durnf. and E. 454,) may be carried on by

matters, and things relating thereto, for the term of years (1), to be computed from the date hereof, and to be thence next ensuing, if they the said parties shall so long live, and no such other event shall happen as hereinafter is mentioned in relation thereto (2), (but sooner determinable nevertheless as hereafter mentioned) under and subject to the provisos, conditions, declarations, and agreements hereinafter contained, (that is to say),

**COPART-
NERSHIP.**

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any persons in copartnership, except marine insurances, which by 6 Geo. 1, c. 18, are exclusively confined to the Royal Exchange and London Insurance Companies; and see *post*, No. VIII.

(1) Unless some precise period be fixed for the duration of the copartnership, it may, according to the better opinion, be dissolved at the will of either party, and, as it should seem, without any previous notice; see *Master v. Kirton*, 3 Ves. jun. 74; *Wats. Copart.* 380; *Peacock v. Peacock*, 16 Ves. jun. 49, 56; *Featherstonhaugh v. Fenwick*, 17 *ib.* 298. 308; *Crawshay v. Maule*, 1 Wils. 181.

Partnership will
cease on notice,
if no term men-
tioned.

(2) A copartnership will, from its nature, unless it be otherwise declared, determine on the death of either of the parties, although it be for a term of years which has not expired; *Gillisprice v. Hamilton*, 3 Mad. 251; it being the voluntary assent of two or more persons to unite together in one common concern, by reason (except in the case of part owners of ships) of a reciprocal confidence which they place in each other: and hence it will not comprehend the executors or other representatives of the parties, unless it be expressly declared so by the parties; and see *Pearce v. Chamberlain*, 2 Ves. 33; and no notice of such dissolution is requisite in order to prevent the estate of the deceased partner being liable to subsequent debts, *P. Eld. Ch. Vallianey v. Noble*, 3 Mer. 614, *post*, p. 58, n. (2): And if either party become insane, *Sayer v. Bennett*, 1 Cox, 107, or the concern be incapable of being managed according to the articles, *ib.* 213, it may be vacated by application to a court of equity.

Partnership
determines on
death.

COPART-
NERSHIP.

*Deed of
Copartnership.
(Full Form.)*

THAT (1) each of the said parties shall advance and bring into and for the use of the joint trade the [further] sum of £ , by way of additional capital, at the time and in the manner hereinafter mentioned (2), and which they do hereby for themselves, their heirs, executors, and administrators, covenant, promise, and agree with

Distinct clauses. (1) This division of the stipulations between the parties into separate clauses, renders them more easy to be referred to by parties unaccustomed to the perusal of parchment writings, and is therefore recommended to be observed in the engrossment.

Incoming party. (2) If the capital is agreed to be brought in by an incoming partner by instalments, the bankruptcy of the other party, before they be completed, will not enable him to withhold the rest of the payments, unless it be otherwise provided by the articles; see Akhurst v. Jackson, 1 Swans. 85; 1 Wils. 47; Wilson v. Greenwood, *ib.* 223, where therefore the capital is so brought in, it should be added,

“Save only and except the said (*old partners*) shall happen to become bankrupt between any of the times appointed for payment thereof, in which case no further or other sums shall be paid or payable by the said (*new partner*) but the said copartnership shall thenceforth cease under the provisions hereinafter contained, and this present covenant on the part of the said (*new partner*) be null and void.”

If the whole capital be provided by one party, say,

Capital found by
one party.

“THAT the capital which shall be requisite for carrying on the said trade or business shall be found and provided by the said (*one party*), he the said (*other party*) paying or allowing to him the said (*first party*) his executors or administrators interest after the rate of £5 per cent. per annum by half-yearly payments for one moiety or half part of the capital or sums which shall be so by him provided, and giving such exclusive attendance to the said business as hereinafter is expressed.”

and to each other, and the executors and administrators of each other, to advance and bring in accordingly.

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NERSHIP.**

*Deed of
Copartnership:
(Full Form.)*

THAT the said joint trade, and all buyings, sellings, and other transactions relative thereto, shall be made and carried on in the joint names of them the said parties, and at and for their mutual and common benefit, and risk of profit and loss, in the proportions hereinbefore expressed, under the style or firm of _____, except only where it shall be necessary that the christian names of the said parties should be used, in which cases they shall be used or placed in the order they are named in these presents.

The trade to be
carried on in
the joint names
of the parties.

THAT the said trade shall be carried on at _____ during the said copartnership, except in the case of fire, or any other accident or event which shall render a removal necessary, [and then at such other place or places as the said parties {or the major part of them (*if more than two*)} (1) shall from time to time mutually agree upon.]

Place of carry-
ing on the trade.

THAT the premises where the said business shall for the time being be carried on, and all warehouses, buildings, or ground hereafter to be

Premises to be
part of the
capital stock.

(1) If there be three or more copartners, say,

More than two
copartners.

“As they the said (*copartners*) or the major part of them shall from time to time agree upon.”

But if there are two copartners only, the lines within brackets may be wholly omitted; as a mutual agreement between the parties upon any subject relative to the joint trade, will necessarily be binding upon them without any previous declaration to that effect.

**COPART-
NERSHIP.**

*Agreement for
future
Dissolution.*

Reference to
arbitration.

AND it is hereby further agreed and declared by and between the parties hereto, that in case any doubt, difference of opinion, or question, shall hereafter arise between them with respect to the carrying these presents into effect, according to the true intent and meaning hereof, or relative to this present clause or agreement, the same shall be referred to and be decided by two counsel in the law of the degree of barrister, one to be named by each of the said parties hereto, and in case of difference between them, then by or with the assistance of any third counsel to be by such two counsel named, and the opinion of such two counsel so to be first named, or of such third counsel, or of any two of them, shall be binding and conclusive upon each of the parties hereto, and their respective executors and administrators, and by them respectively submitted to accordingly, without further controversy, and which said reference shall be by mutual bonds and such other reciprocal stipulations as are usual or proper in similar cases(1). IN WITNESS, &c.

Clause of
reference.

(1) This clause of reference may be more fully set out, if thought requisite, as *post*, No. III. p. 72, or No. IV.

COPART-
NERSHIP.

*Deed of
Copartnership.
(Full Form.)*

No. III.

*A Deed of Copartnership between two Persons
either as wholesale or retail Traders.**Variations where the Partners consist of several Persons.**Where one of the Parties is an incoming Partner.**Also where the Parties have mercantile Concerns
abroad.**Other Variations as in Margins below.*

THIS INDENTURE (1), of _____ parts, made the

(1) It is not necessary in order to constitute a copartnership that the contract should be by indenture, nor even that there should be a written agreement between the parties, their acting together as copartners being alone sufficient to bind them in that character with respect to third persons; see *Young v. Axtell*, cited *Wats. Copartnership*, p. 6; *Teed v. Elworthy*, 14 East, 210; *Crawshay v. Collins*, 15 Ves. jun. 226. But in order that there may subsist a proper understanding between each other, with respect to their proportion of the profits, and other matters relative to the copartnership connexion, it is evidently proper that their reciprocal engagements should be reduced into writing. A copartnership, moreover, without writing, and for an indefinite period (of which it would be difficult to prove the contrary) may be dissolved by either party at pleasure, *Featherstonehaugh v. Fenwick*, 17 Ves. 298, the consequence of which (if the parties were hostile) would be a general sale of all the joint property, without a preference to either party to take the share of the other, for want of which, or of other beneficial arrangements, an established concern might be wholly destroyed by the malevolence of either of the copartners; and see *ante*, INTRODUCTION.

Copartnership
need not be in
writing.

**COPART-
NERSHIP.**

*Deed of
Copartnership.
(Full Form.)*

day of in the year of the
reign, &c. and in the year of our Lord .
BETWEEN (*one copartner*) of, &c. of the one
part, and (*other copartner*) of, &c. of the
other part (1). WHEREAS (2) the said (*copartners*)

Several parties.

(1) If there be several persons entering into copartnership, each of them may be made as of a separate part; as to the number of partners allowed to be in copartnership, see *ante*, p. 2, n. (1).

**Recital of
previous agree-
ment for co-
partnership.**

(2) If the deed be entered into in consequence of a previous agreement in writing, such agreement may be here recited, in order to show the conformity of the present deed; but this is not necessary, as the parties are not finally bound by the articles, but they mutually agree to depart from them; such recital may be thus:

“ WHEREAS by articles of agreement, bearing date on or about the day of which was in the year , and made or expressed to be made between the same persons as are parties hereto, the said (*copartners*) agreed to become copartners together in the trade of , from the day of then next, for the term of years, with a capital of £ upon the terms and conditions, and under and subject to the rules, regulations, and agreements therein mentioned, and in these presents more fully expressed.”

**New partner
admitted into
original firm.**

If the deed be executed upon a new partner being admitted into an original firm, say,

“ WHEREAS the said (*original partners*) have heretofore carried on the trade or business of in copartnership. AND WHEREAS in consideration of the sum of £ agreed to be paid to them by the said (*incoming partner*) and of the trust and confidence they repose in his diligence and integrity, they have agreed to admit him into copartnership with them in the said trade for the space of years, if he shall so long live, upon the terms and conditions hereinafter expressed. AND WHEREAS upon the treaty

in consideration of the mutual confidence they repose in each other, and in order to extend their

COPART-
NERSHIP.

Deed of
Copartnership.
(Full Form.)

for the said partnership, it was agreed that the said (*incoming partner*) should also pay unto the said (*former partners*) one-third part of the value of the stock in trade, to be ascertained by two indifferent persons, one to be chosen by the said (*former partners*) and the other by the said (*incoming partner*), and that thereupon one-third part of such stock in trade should become the property of the said (*incoming partner*), in common with the others of them.

AND WHEREAS the said stock in trade and other effects have been appraised in the manner aforesaid, and have been valued at the sum of £ , with which the said parties are fully satisfied. NOW THIS INDENTURE WITNESSETH,

that for and in consideration of the sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency, to the said (*former partners*) in hand well and truly paid by the said (*incoming partner*) upon the sealing and delivery hereof, being one full and equal third part of the said sum of £ , the amount of such valuation as aforesaid, for the purchase of one-third part of the stock in trade and effects aforesaid, the receipt whereof the said (*former partners*) do hereby acknowledge, [and of and from the same do acquit, release, exonerate, and for ever discharge the said (*incoming partner*) his executors and administrators, by these presents].

Assignment of
third of the
stock in trade
to incoming
partner.

THEY the said (*former partners*) HAVE granted, bargained, sold, assigned, transferred, and set over, and by these presents DO, and each of them BOTH grant, bargain, sell, assign, transfer, and set over unto the said (*incoming partner*) his executors, administrators, and assigns, one full third part or share (the whole into three equal third parts or shares being considered as divided) of and in ALL and singular the houses, out-houses, buildings, barns, stables, goods, utensils, stock, debts, stock in trade, and other effects whatsoever, mentioned and set forth in the inventory or schedule hereunto annexed, with all and every the appur-

**COPART-
NERSHIP.***Deed of
Copartnership.
(Full Form.)*

The copartner-
ship stock to be
employed solely
for the joint
trade.

Expenses and
casual losses to
be borne by
the parties in
proportion to
their respective
interests.

THAT (1) the capital stock of the said copartnership shall at all times, and from time to time during the said copartnership, be continued in and employed solely for the purposes of the said joint trade, and no part thereof be taken out of the same, or employed by either of the said parties in or for any other trade or business, or use or purpose whatsoever.

THAT the rents, taxes, expenses of repairs and insurances; wages and boarding of servants, shopmen, journeymen, and assistants; charges of horses, carriages, and implements of trade, insurances against fire or shipwreck, and all other necessary and reasonable charges and expenses incident to or attendant upon the copartnership concerns, as well as all casual losses and damages which shall at any time happen to the said joint trade by bad debts, decay of goods, suits or actions at law or in equity, thefts and embezzlement by servants and others, or by reason of any other accident whatsoever, (except as hereinafter is mentioned) shall be sustained and borne by each of the said parties out of the capital stock of the said

Further capital.

(1) If the parties, or either of them, are to bring in a further capital, add here a covenant for that purpose, as,

“THAT each of the said parties shall advance and bring into the said capital stock of the said copartnership, the further sum of £ at such time and times, and in such manner as the other of the said (*copartners*) [or the major part of them] or arbitrators to be appointed in case of difference as hereinafter mentioned, shall require the same.”

trade, and the gains and produce thereof in equal shares or proportions, {or according and in proportion to his share and interest therein,} and in case the same shall be insufficient for that purpose, then by them the said parties in the like proportions out of their own separate estates; PROVIDED nevertheless, that in case any such loss or damage as aforesaid shall happen through the wilful neglect or default of either of the said parties singly, or of his own proper servants or apprentices, (or such as shall have been taken or employed otherwise than as hereinafter mentioned), then the same shall be borne and sustained by and out of the share and interest, or separate estate of such party only.

**COPART-
NERSHIP.**

*Deed of
Copartnership.
(Full Form.)*

THAT (1) all gains, increase, and profits of the

Profits to be-
long to each in
proportion to
his capital.

(1) It is essential to a copartnership that there should be a communion of profit and loss, and when there is such it will be a copartnership, although it be not so declared; *Coope et al. v. Eyre et al.* 1 Hen. Blac. 43. 48; and the taking a share superinduces a liability to sustain a portion of the loss, *Waugh v. Carver*, 2 *ib.* 247, the provisions, therefore, which are sometimes inserted in deeds of this kind, that a party advancing a part of the capital in consideration of sharing the profits without bearing any part of the loss, are nugatory and deceptive, so far as concerns the rights of third persons; contracts of this sort may, however, under circumstances, be good as between the parties themselves; see *Hesketh v. Blanchard*, 4 East, 144; unless the person advancing the money is, at all events, to have his principal returned with five per cent. interest in the mean time, in which case, a stipulation for a certain portion of the profits also, will make the transaction usurious; *Morse v. Wilson*, 4 Durnf. and E. 553. But it is holden, that a sub-contract, as it is called, i. e. where a partner divides his beneficial interest amongst others, does not constitute a copartnership, as the sub-

Communion of
profit and loss
incident to co-
partnership.

Sub-contractors
not copartners.

**COPART-
NERSHIP.**

*Deed of
Copartnership.
(Full Form.)*

Stock and pre-
mises to be in-
sured at the
expense of the
trade.

said capital stock, after satisfying rent, taxes, wages to clerks and servants, premiums for insurance, and other charges and expenses of carrying on the said joint trade, and other matters and things incident thereto as aforesaid, shall belong to and be divided between the said parties, according to their respective shares and interests therein, under or by virtue of these presents (1).

THAT the messuages, warehouses, buildings, and premises where the said joint trade shall, for the time being, be carried on, and such part of the stock in trade of the said copartnership as shall be liable to damage by fire, shipwreck, or other insurable accident, shall from time to time be insured at the expense of the said joint trade, [and the gains and proceeds thereof,] in some or one of the public offices of insurance in the city

Dormant part-
ners are liable.

contractor is unknown to the world and to the other partners, and does not, therefore, increase the credit of the house, nor add to its capital; see *Coope v. Eyre*, 1 Hen. Blac. 37. Dormant or sleeping partners, however, i. e. persons who bring in a part of the capital stock to abide the success of the concern, without interfering in the business, are equally liable with the ostensible partners, "for they would otherwise be in receipt of exorbitant interest without incurring any risk;" *Hoare v. Dawes*, Doug. 371; *ex parte Hamper*, 17 Ves. jun. 412; and no agreement between the parties can prevent this liability to the world; see *Herbert v. Wilson*, cited Wats. Part. 169; *Smith v. Jameson*. 5 Durnf. and E. 601, and *post*, Nos. VI. and VIII. in notes.

Proportion of
profits of each
party should be
mentioned.

(1) It is necessary in a deed of copartnership, that the proportion of profit and loss which each party is to receive or sustain, should be declared in the articles, as they will otherwise, by the principles of a copartnership connexion, be deemed to possess equal shares and liabilities.

of London or Westminster, and borne by the said parties in proportion to their respective interests aforesaid, and the money which shall at any time be received by virtue of any such insurance, shall belong to the said copartnership stock, and be applicable and divided accordingly.

**COPART-
NERSHIP.**

*Deed of
Copartnership.
(Full Form.)*

AND IT IS HEREBY FURTHER AGREED AND DECLARED, that no clerk, book-keeper, shopman, or other servant, shall at any time be taken or employed or discharged without the consent of the other {or major part of the others} of the said parties; and that if any loss or damage shall arise or happen to the said joint trade, by reason of any embezzlement or other misconduct of or by any clerk, book-keeper, shopman, or other servant, who shall be taken or employed without such consent as aforesaid, or if the same shall happen after the other of the said parties shall have given

Clerks, &c. not to be taken or discharged, but by mutual consent.

days previous notice or warning in writing of any suspected dishonesty, or of the misconduct of any such servant, (although taken with such consent) and requiring his immediate dismissal, then, and in either of the said cases, the same shall be borne and sustained solely by the party {or respective parties} by whom he or they shall have been so taken or employed, and the amount of such loss be deducted from his {or their} particular share in the said copartnership estate, or otherwise paid by him out of his {or their} own proper monies and effects.

THAT neither of the said parties shall take any apprentice in or to the said joint trade, without

Neither party to take apprentices without consent.

**COPART-
NERSHIP.***Deed of
Copartnership.
(Full Form.)*Premiums to be
added to the
joint stock.All contracts,
&c. to be made
in the names of
the parties.Each party to
take apprentices
by turns.One partner
only to take ap-
prentices.

the consent of the other [*or* major part of the others] of them, except as hereinafter mentioned.

AND that all monies which shall be received with any apprentices so taken by the said parties, or either of them, shall be brought in to the joint stock for the common benefit of the said parties, according to their respective shares and interests therein, and all charges and expenses attending the keeping of such apprentices, shall be borne by them in like proportions (1).

AND IT IS HEREBY FURTHER AGREED AND DE-

(1) If the parties agree to take apprentices alternately, which they sometimes do, say

“THAT each of the said parties shall be at liberty to have, and take alternately, or in turn, one or more apprentice or apprentices, to be instructed or employed in the said trade or business, who shall be equally at the command of both of the said parties, and that all monies which shall be had or taken with any such apprentice or apprentices, by way of premium or otherwise, shall belong to and be received for the said parties equally, share and share alike, and to that end shall be brought into the joint stock, [*or* shall belong to the said parties according and in proportion to their respective shares or interest in the capital stock of the said copartnership.”]

If one of the parties only is to have the privilege of taking apprentices, say

“THAT neither of the said parties shall, without the consent of the other of them, take or receive any person or persons as an apprentice or covenant servant, to be instructed or employed in the said joint trade, save only the said (*one partner*), who shall and may at any time during this copartnership, take one or more apprentice or apprentices, or covenant servant or servants, at his free will

CLARED, that all contracts and engagements entered into by the parties hereto, or either of

COPART-
NERSHIP.

*Deed of
Copartnership.
(Full Form.)*

and pleasure. AND that the premium or other money which shall be given with every such apprentice or covenant servant shall be received by him the said (*same partner*) his executors or administrators, as and for his and their own proper monies and estate, separately and exclusively from the capital or joint stock; and every of which said apprentices or covenant servants shall be kept and maintained by and at the sole expense of him the said (*same partner*) his executors or administrators, without the said joint stock or trade being in any manner charged or burthened therewith. PROVIDED nevertheless, that he the said (*other partner*) shall and will teach and instruct, or concur with the said (*head partner*) in teaching and instructing every such apprentice or covenant servant in the said trade or business, and all matters or things relative thereto, according to the best of his judgment and ability."

But all partners
equally to in-
struct them.

If it be agreed that either party may bind his son apprentice, say,

Either party
may take a son
apprentice.

"THAT either of the said parties may, at any time during this partnership, have or take, without any premium or consideration, one of his sons as an apprentice to them the said parties, or to either of them, to be taught and instructed in the said trade or business of , and the various branches thereof; and in the case of the death or refusal of any such son to follow the said business, the party whose son shall so die or refuse, shall be at liberty to take or bind any other of his sons as an apprentice to the said joint trade, and so from time to time, and as often as any or either of his sons shall die or refuse."

If apprentices are to be boarded in the house of one of the partners only, say,

One partner to
board appren-
tices and ser-
vants.

"THAT all apprentices and covenant servants who shall be employed in the said joint trade shall be provided with board and lodging by the said (*one partner*) who shall be paid or allowed out of the said copartnership stock, and the

**COPART-
NERSHIP.**

*Deed of
Copartnership.
(Full Form.)*

Entries to be
made in proper
books of all
copartnership
transactions.

them, on account of or in any wise concerning the said joint trade, and all checks or drafts upon bankers, and others, bills of exchange, promissory notes, and other securities, bills of parcels, receipts for money, and other evidences whatsoever relative thereto, shall from time to time, be made, given, and taken respectively in their joint names, or as they shall jointly appoint, and not otherwise.

THAT true and faithful entries of all monies which shall be received and paid on account of the said joint trade; and of all goods, wares, and merchandises purchased, or sold, or received for or on account of the same, and by and from whom, together with the rates and prices thereof; and also of all such other transactions, circumstances, matters, and things whatsoever, as shall be necessary or proper to manifest, at all times, the true state of the said joint trade, the dealings and concerns thereof, and the interests of the respective parties hereto, as copartners therein, shall be daily made in proper ledgers or books to be provided and kept for that purpose, by or by the order of such of the said parties as shall happen to be more immediately privy to or concerned in the same respectively (1).

profits thereof, for the board and lodging of every such apprentice or covenant servant, after the rate of £ per annum, by equal quarterly payments."

One party to
keep the cash,
&c.

(1) If it be agreed that one of the copartners shall have the management of the ready money, &c. received on account of the copartnership, add,

"THAT the said (*one copartner*) shall have the custody

THAT the said books of accounts, and all other books relating to the affairs of the said joint trade,

COPART-
NERSHIP.

*Deed of
Copartnership.
(Full Form.)*

of the current monies, cash, bills, bonds, notes, and other securities belonging to the said joint trade, until the period of the annual or other sooner settlement, or division of profits hereinafter provided, he the said (*same party*) paying therewith from time to time, all bills, charges, and expenses due or payable from or by the said joint trade in the mean time, and keeping a just and true account thereof, and of other his application of the same, in a book to be kept for that purpose, and to remain in the counting-house of the said joint trade, and the said (*same copartner*) shall once in every month, balance his account therein up to the last Saturday in the month then next preceding, and if required by the other of the said parties, shall produce the said bills, bonds, notes, and other securities and balances of cash; and when and as often as any such cash, bills, or other securities shall be received by the other of the said parties, the same shall be immediately paid over by the party receiving the same to the said (*cash-copartner*), and in default thereof shall be placed and credited to his account in the books of the said copartnership."

Books of account, &c. to be kept at the counting-house, and be open for inspection of the parties.

And if the parties be merchants, the clause may be thus varied: Merchants.

"THAT the said (*one copartner*) during the said copartnership, shall have the sole receiving, keeping, and charge of all the cash and money, and of all the goods, wares, and merchandise, &c. and of all the bonds, bills, and specialties belonging to the joint accompt here in England, and of all goods, &c. and bills and securities to be received from beyond the seas for and upon the said joint trade or accompt, and also the charge of the books to be kept here in England touching the same, and the buying of all goods and merchandise to be sent abroad, and the selling of all such as shall be received from beyond the seas, and otherwise ordering and disposing of the same. And that the said (*other copartner*) shall reside and have the management and

**COPART-
NERSHIP.**

*Deed of
Copartnership.
(Full Form.)*

and all letters, bills, bonds, notes, deeds, and other securities, evidences, and writings whatsoever concerning the same, or the parties hereto, or either of them in respect thereof, shall be kept at the counting-house where the said business shall be carried on, (unless otherwise agreed between the said parties [or the major part of them]) and at all times during the said copartnership, and also after the determination thereof, until the accounts thereof shall be finally settled and closed, shall be open to the inspection of the said parties, and their respective representatives, and they or either of them shall at any time during the usual hours of business, and at all other seasonable times, be at liberty to resort and have recourse to, and to peruse, examine, and take copies of or extracts from the same, without any hinderance or refusal whatsoever.

Neither party
to remove co-
partnership
books.

AND that neither of the said parties shall or will at any time secrete or remove, or cause or procure to be secreted or removed, unless in case of fire or other necessity, any of such books, securities, evidences, deeds, or writings as aforesaid, except only for the purpose of producing the same, in or by the order of a court of judicature on behalf of some or one of the parties hereto, or their respective representatives, and whereof

transaction of the affairs relating to the said copartnership and joint trade, which are to be conducted or transacted at
, or other place or places in parts beyond the seas."

reasonable notice shall be given by him or them, on whose behalf the same may be required to be so produced.

COPART-
NERSHIP.

*Deed of
Copartnership.
(Full Firm.)*

Half yearly
rests to be made
on the accounts,
and signed by
the parties.

THAT a full and general account in writing shall be made half-yearly of the stock in trade, and of all monies, effects, debts, credits, and demands belonging, or owing to, or from the said joint trade, on the day of and the day of in every year during the continuance of the said copartnership, or as soon after the said days as conveniently can be, and at furthest within one calendar month next thereafter, and a rest and balance be made and struck concerning the same, with a view of ascertaining the profits and loss arising therefrom, as nearly as may be, which account, rests, and balances, shall be fairly entered in proper books to be provided for that purpose, and a summary or balance sheet thereof be delivered to each of the said parties for his own proper use.

THAT when the said half yearly accounts shall be settled and approved by the said parties, the same shall be signed by them respectively, and then and at all times thereafter (1), shall be binding

Accounts, when
signed, to be
conclusive.

(1) Without any contrary express agreement between the parties an account is, by the custom of merchants, considered as allowed, if no objection be made to it within a reasonable time after it is delivered; see *Tickell v. Short*, 2 Ves. 239; and that although it be not signed by the parties, the tacit assent being equally binding as a signature; *Willis v. Jernagan*, 2 Atk. 252; hence the necessity of requiring signature and a definite time for investigation, if such be the wish of the parties.

No objection to
an account is an
allowance.

COPART-
NERSHIP.

*Deed of
Copartnership.
(Full Form).*

Surplus profits
to be annually
divided accord-
ing to the in-
terest of the
parties.

and conclusive upon all parties and persons in-
terested therein, unless some error to the amount
of £ or upwards, shall be discovered within
the space of calendar months next there-
after; and in that case the said accounts shall
be opened and investigated, so far only as may be
necessary for rectifying the same.

THAT upon the settlement of the half yearly
accounts of the said joint trade, on the said
day of in each year, the clear gains
and profits thereof, after deducting all such losses,
payments, and expenses attending the same, as
hereinbefore are mentioned, shall be divided be-
tween the said parties in equal moieties, {or ac-
cording and in proportion to their respective
shares and interests in the said copartnership
stock} and the shares of each the said parties,
shall be paid to them respectively, or passed to
their respective separate accounts in the books of
the said copartnership, after deducting such sums
as may have been previously received by them, on
account thereof, and such loss, if any, as shall
have been sustained by any such default as here-
inbefore is mentioned, and allowing interest after
the rate aforesaid for such sum or sums as they
may respectively have lent unto, or left in the
said trade.

Each party to
employ himself
wholly in the
business.

AND the said parties hereto, do hereby fur-
ther promise, declare, and agree, that they re-
spectively will at all times, and from time to
time during the subsistence of the said copart-
nership, [and afterwards, until the final settle-

ment of the concerns thereof,] employ themselves jointly and separately (1) in and about the affairs and business of the said joint trade, and shall and will use their and his best endeavours to promote the increase and prosperity thereof,

COPART-
NERSHIP.

Deed of
Copartnership.
(Full Form.)

(1) If it be intended that one of the partners only shall be required to give up his attention to the business, say,

One party to
attend to the
business, and
occupy the
house.

“THAT the said (*one partner*) shall, according to the best of his skill and abilities, attend to and manage the business of the said partnership, and employ himself wholly in the concerns thereof, without engaging himself either directly or indirectly in any other trade or business whatsoever; and that in consideration thereof, he the said (*same party*) shall be allowed to receive and take out of the profits of the said joint trade, the yearly sum of £ , over and above his share thereof. AND shall also have and enjoy the use and occupation, for himself and family, of the messuage or dwelling-house, with the appurtenances, where the said joint trade is now, or for the time being shall be, carried on, without any rent or other sum in the nature thereof being paid by him for the same. [Or if so agreed, he the said (*same party*) allowing annually the sum of £ to the said copartnership stock, by way of rent for the same.”]

If either party is to be excused from a personal attendance upon the business, say,

One partner to
be excused per-
sonal attend-
ance.

“THAT the said (*one partner*) shall not be under any obligation personally to attend to, or act in the management of the said joint trade, or in any manner to concern himself with the same further or other than as he shall from time to time think fit, nor be restrained from pursuing or carrying on any other trade, business, or employment whatsoever, if he shall choose so to do.”

COPART-
NERSHIP.*Deed of
Copartnership.
(Full Form.)*Neither party
to be concerned
in any other
trade.

to the utmost of their and his skill and judgment (1).

THAT neither of the said parties, [except as aforesaid] shall at any time during the said copartnership, either alone or in conjunction with any other person or persons, either as a principal,

One partner to
reside in the
house.

(1) If it be agreed that one of the parties shall reside in the house where the business is carried on, declare

“THAT the said (*one partner*) shall exclusively have, and reside during the said copartnership, in the dwelling-house where the said joint trade shall, for the time being, be carried on, he paying to the said copartnership stock the yearly sum of £ , by half-yearly payments, and the residue, if any, of the rent which shall be payable for the said house, together with all necessary repairs thereof, and all taxes, rates, and assessments, in respect of the same, being borne and paid out of the said joint stock and the gains thereof. [Or, (*if so agreed*) the said (*residing partner*) nevertheless keeping the said dwelling-house and premises in repair, at his own separate expense, and also paying and allowing to the said partnership stock and effects one part of all taxes, rates, and assessments, payable in respect thereof.”]

One partner to
hire servants,
&c.

If one of the partners only is to be entrusted with the hiring of servants, &c. say,

“THAT the said (*one partner*) shall have the sole power and authority of or concerning the hiring and discharging of servants, journeymen, and others, to be employed in the said joint trade, and of entering into such contracts and agreements with respect to wages or salaries, times of service, and other matters and things relative thereto, as he shall judge proper, so nevertheless that such servants and others, when so hired or taken, shall be equally under the orders and directions of each of the said parties.”

assistant, or otherwise, use, exercise, follow, carry on, or be in any manner concerned in the trade of a _____, or any branch thereof, other than under and in pursuance of these presents, or any other trade or business, without the consent in writing of the other {or major part of the others} of the said parties first obtained for that purpose (1).

COPART-
NERSHIP.

*Deed of
Copartnership.
(Full Form.)*

AND THAT they the said parties respectively shall and will be true and faithful to each other in all buyings, sellings, receipts, payments, accounts, reckonings, and other transactions, dealings, matters, and things whatsoever, relative to the said joint trade and copartnership; and shall and will, from time to time, make and give a just and true account and disclosure to, and also consult and advise with each other in and about the business and concerns thereof, when and as often

Parties will be
faithful to each
other.

(1) This provision is not inserted to prevent the copartnership stock being affected by the independent dealings of either party, as the joint trade is bound with respect to such matters only as relate to the copartnership trade; *De Berkomp v. Smith*, 1 Esp. Rep. 20. *Ex parte Bonbonus*, 8 Ves. jun. 540; but that the attention of the parties may not be diverted from the copartnership concerns by other business not connected with, or to the prejudice of the joint trade; and that a stipulation of this kind is legal; see *Mares v. Colman*, 18 Ves. 438; but if one of the parties is in the exercise of some other trade, &c. there may be added,

Parties not to
be concerned in
other trades.

“Save only with respect to the said _____, who shall be at liberty to continue in, and allowed to carry on, the trade or business of _____, as he has hitherto been accustomed to do, and now does, at _____ or elsewhere.”

One party
privileged.

COPART-
NERSHIP.

*Deed of
Copartnership.
(Full Form.)*

as there shall be occasion, {and that each of them will employ himself in, or take the whole direction or management of such department therein, as shall be agreed upon between them, or as the major part of them shall from time to time require} (1).

Merchants.

(1) If the copartners be merchants, then may be added,

“AND moreover, that he the said (*foreign copartner*) shall not, nor will at any time or times during this copartnership, leave, transfer, or commit the business or affairs of or concerning the said joint trade or copartnership in any place or places beyond the seas where he shall have such charge as aforesaid, nor any bills or specialties relating to the same, to any other person or persons whatsoever, save only such as shall be thought fit by the said (*home copartner*), testified by his consent and agreement in writing under his hand in that behalf. AND FURTHER, that he the said (*same copartner*) shall from time to time hereafter during the said copartnership, keep, or cause to be kept, in such place or places beyond the seas where he shall continue to have charge or be employed, just and true books of account and reckonings of all and every his dealings, doings, buyings, and sellings, transactions and engagements touching the premises, in such manner and form in every respect as merchants of the same or like trade are commonly used to do; AND shall send and consign every , or oftener, unto the said (*home copartner*) true copies of his weekly journals, and particulars of all goods and wares received and sold, goods and wares sent, and money remitted, by exchange or otherwise, and all other his dealings whatever relating to the said joint trade; and also at the end of every months next ensuing each other, to be reckoned and accounted from the day of the date of these presents, during the said copartnership, consign and send over unto him the said (*home copartner*) a true, plain, perfect, and general account in writing under his hand, of all his receipts, payments, buy-

THAT neither of the said parties shall nor will, without the consent in writing of the other {or major part of the others} of them, use, take, or employ any of the money or effects of the said copartnership, or engage the credit of the copartnership stock, in or for any transaction, deal-

COPART-
NERSHIP.

*Deed of
Copartnership.
(Full Form.)*

Neither party
will apply the
copartnership
monies to his
own use.

ings, sellings, dealings, doings, and transactions whatsoever by him made or done, touching or concerning the said joint trade and copartnership, particularising therein all expenses, and all goods, wares, and other things then remaining on his hands. AND shall and will, during the continuance of this joint trade, at his own costs and charges (for the allowance hereinbefore mentioned), pay for his diet, lodging, and support, in all things, without charging the said joint trade therewith. AND FURTHER, that it shall be lawful for the executors, administrators, appointees, or lawful attorney of the said (*home copartner*) at his and their will and pleasure, to have liberty, ingress, egress, and regress, into, out of, and from the counting-house, and storehouses, for the time being, and books of account of the said (*foreign copartner*) in the parts beyond the seas; and shall and may freely peruse and examine the said books of account, and all bonds, bills, and specialties whatsoever, and all wares, goods, and merchandises, and other things whatsoever, in the parts beyond sea, relating to the said joint trade in the hands, custody, or possession of the said (*foreign copartner*). AND moreover, that he the said (*foreign copartner*) shall and will, with all convenient speed, from time to time hereafter, during the said joint trade, consign, remit, and send over to the said (*home copartner*), from the said parts beyond the seas, in money, by exchange, or in wares and merchandises, the proceeds of all goods, wares, and other things which shall be by him received, and sold or disposed, the amount of such allowance as aforesaid only excepted."

**COPART-
NERSHIP.***Deed of
Copartnership.
(Full Form.)***Except allow-
ance for sub-
sistence.****Money received
to be paid into
bankers' hands.**

ing, purpose, matter, or thing whatsoever, other than on the account and for the benefit of the said joint trade, and in the usual course of carrying on the same; save only and except that each of the said parties shall or may take or retain out of the cash or capital stock of the said joint trade, or the current receipts on account thereof, monthly or oftener, during the said copartnership, any sum or sums not exceeding in the whole the sum of £ in any one half year, for his own proper use, the said party so taking out the same, debiting himself from time to time therewith in the books of the copartnership (1).

THAT all money which shall be received by either of the said parties upon the account of the said joint trade, exceeding the sum of £ , shall from time to time (except in respect of payments of wages, rents, taxes, or other current or necessary expenses) be paid by him into the hands of the bankers for the time being of the said parties, to

**Each party to
be allowed
expenditure on
customers.**

(1) Sometimes the parties have an allowance for the expense of customers, in which case add,

“ THAT each of the said parties shall be allowed or paid out of the said joint stock, and the increase thereof, all monies which shall be reasonably expended by him upon or with any customer or customers, or other person or persons, on account of or relative to the business of the said joint trade, or for the benefit or increase thereof, provided the same shall be entered in the books of the said copartnership as soon as conveniently may be thereafter, with a view of claiming such payment or allowance.”

their joint account, before the hour of five o'clock on the same or following day.

THAT neither of the said parties shall nor will cause or suffer the copartnership estate to be at any time attached, charged, or incumbered with, or on account of, his private debts or engagements, but shall and will pay the same out of his own proper monies and estate, and at all times effectually protect and indemnify the other of them, his heirs, executors, and administrators, and the said joint stock and effects, from and against the same, and all costs, charges, damages, and expenses to be incurred by reason thereof. AND that if the said joint stock, or any part thereof, shall be attached, seised, or taken in execution on the separate account of {any or} either of the said parties, it shall be lawful for the other {or others} of them to redeem the same out of the share of the party {or parties} on whose account such redemption shall have been made, and charge the amount thereof, with lawful interest, to his {or their} account in the copartnership books; and in case such share shall be incompetent to such redemption, then the same shall be effected as soon as may be, by and out of the capital of the said party {or parties} in the said joint trade, and shall be recoverable by action of debt against him {or them}, at the suit of the other {or others} of them, {or of the major part of them} (1).}

**COPART-
NERSHIP.**

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Neither party
will suffer the
estate to be
charged with
his private
debts.

(1) Although a creditor of one of the copartners only, (even though a customer), has no claim upon the joint property but

Separate cre-
ditor has no
claim on the
joint estate.

COPART-
NERSHIP.

*Deed of
Copartnership.
(Full Form.)*

Neither party
to buy or sell
beyond a cer-
tain amount.

AND IT IS HEREBY FURTHER DECLARED AND AGREED, that neither of the said parties shall purchase, sell, or deliver, or make, or enter into any contract or agreement for the purchase, sale, or delivery of any goods, wares, or merchandises of, or belonging to, or on account of the said joint trade, after he shall have received a notice or recommendation in writing from the other [*or the major part of the others*] of them, not to purchase, sell, or contract for the same; nor shall either of the said parties purchase or sell, or agree for the purchase or sale of any such goods, wares, or merchandises, exceeding the amount or value of £ in any one week, without the privity and consent of the other [*or the major part of the others*] of them.

If either party
purchase, &c.
without the
other's consent,
the same shall
be on his own
account.

THAT in case either of the said parties shall purchase, sell, or deliver, or contract for any goods, wares, or merchandises, contrary to the provision last aforesaid, the other [*or major part of the others*] of them, shall be at liberty to assent to, or dissent from, the same, at any time within the space of three days next after he [*or they*]

only on the particular share of the individual debtor, subject to the accounts and joint debts of the copartnership; see *Field v. Clark*, 4 Ves. jun. 396; *Rex v. Saunders*, 1 Wightw. 50; *Young v. Keighley*, 15 Ves. jun. 557; *ex parte King*, 17 *ib.* 115; *ex parte Hamper*, *ib.* 407; *Dutton v. Morrison*, *ib.* 193; unless such creditor has fraudulently accepted bills, &c. for the whole firm, in which case this declaration would afford it no protection as against third persons; *Waugh v. Carver*, 2 Hen. Black. 235; and *post*, p. 45, n. (2); yet the above clause may afford great facility of redress as against the offending party.

shall have notice thereof, and in case of dissenting thereto, every such purchase, sale, delivery, or contract, shall be considered as made on the proper and private account of the party [or parties] so making the same, who shall accordingly be debited or credited for the amount thereof, in the books of the said copartnership (1).

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THAT neither of the said parties shall, upon any pretence whatsoever, without the leave of the other [or major part of the others] of them in writing first had for that purpose, make, accept (2), or indorse, any bill of exchange, promissory

Neither party to accept any bills of exchange, but in the regular course of trade.

(1) In some kinds of trade it may be proper to insert a stipulation,

Neither party to take journeys without consent.

“THAT neither of the said parties shall, without the privacy and consent of the other of them, make, or commence any journey exceeding the distance of miles, nor any voyage beyond or out of the United Kingdom, on account of the said joint trade.”

(2) This stipulation that neither party shall accept bills, &c. without the consent of the other, is very necessary; for although one copartner cannot (except in the cases after mentioned) bind his copartner by deed, (*Harrison v. Rushforth*, 7 Durnf. and E. 207; *Burn v. Burn*, 3 Ves. jun. 578; *Elliot v. Davis*, 2 Bos. and Pul. 338; unless it be executed by the authority or assent of the other, *Ball v. Dunsterville*, 4 Durnf. and E. 313); yet a bill of exchange, or other negotiable security, or commercial instrument, signed or given by either of the parties in the course of the copartnership trade, will bind all the parties, *Anon. v. Layfield*, 1 Salk. 291; *Pinkney v. Hall*, Salk. 126; *Lord Raymond*, 175, S. C.; *Lane v. Williams, et al.* 2 Vern. 277, 292; *Ridley v. Taylor*, 13 East, 175; *ex parte Gardum*, 15 Ves. jun. 286; unless they have previously given notice to the person taking such security, that they were not to be considered liable, *Alderson v. Pope*, 1 Camp. 404, n.; *Minnit v. Whitney*, 16 Vin. Ab. A. 244;

Each party bound by the other's acceptances, &c.

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If either party
so accept, &c.
he shall be
exclusively
liable.

note, or other instrument in writing, in the name, firm, or style of the said copartnership, unless in the usual course of trade, and for value actually received or to be received to the full amount thereof, and brought to the account of the said joint trade, nor do any other act or thing whereby the said copartnership may be affected, or liable to pay, or answer any sum or sums of money for which the joint stock thereof shall not have received a valuable and sufficient consideration.

THAT if either of the said parties shall make, give, accept, sign, indorse, or execute any such bond, bill, note, or other instrument as last aforesaid, without such consent as aforesaid, he shall alone pay and discharge the same out of his own private and separate estate, or if required by the

Arden v. Sharp, 2 Esp. Rep. 523; Lord Galloway v. Mathew, 10 East, 264; Ridley v. Taylor, 13 *ib.* 175; or unless it were known to the party at the time, that it did not originate on a copartnership transaction, *ex parte* Bonbonus, 8 Ves. jun. 540. And where such bill, &c. is founded on a transaction incident to the copartnership business, it will (unless in the cases just mentioned) be binding upon the other parties, even though it were given for a debt fraudulently contracted; Willet v. Chambers, Cowp. 814; Bond v. Gibson, 1 Campb. 185; but not where such fraudulent debt do not relate to the copartnership concerns, 16 Vin. Ab. p. 242; Pinkney v. Hall, Salk. 126; 1 Lord Raymond, 175. So the signature of either of the parties to a bankrupt's certificate will bind the others, *ex parte* Mitchell, 14 Ves. jun. 597; and Jocaud v. French, 12 East, 317. And in a case where the partnership had been dissolved before the certificate of the bankrupt was obtained, the signature of one of the parties was nevertheless holden to bind the others in respect of a debt contracted during the subsistence of the copartnership, *ex parte* Hall, 17 Ves. jun. 62.

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other [*or* the major part of the others] of the said parties, shall forthwith pay to him [*or* them] the full amount thereof, in order that the same may be paid by such other {*or* others} of the said parties when due, and in default thereof, the said last mentioned party {*or* the major part of the said parties last mentioned} shall have power, by any instrument under his hand and seal {*or* their respective hands and seals} to dissolve the said copartnership, and from the date and delivery of such instrument of dissolution, the same shall accordingly stand absolutely dissolved and determined [to all intents and purposes whatsoever, in like manner as if the same instrument had been executed by both {*or* all} of the said parties, or as if the said term of years hereby limited for the continuance of the said copartnership, had completely elapsed,] but nevertheless without prejudice as aforesaid.

THAT neither of the said parties shall without the consent of the other [*or* the major part of the others] of them, lend any money, or other property or effects belonging to the said joint trade; or trust, or give credit to any person or persons whom the other of them has, in writing, under his hand, forewarned not to be credited or trusted (1).

Neither party
to lend or give
credit contrary
to the assent of
the other.

(1) Every copartner being, for the convenience of commerce, considered as the authorised agent of the firm in all transactions relative to the joint trade; and as either party may, therefore, buy or sell at any price and to any amount at his discretion,

Either partner
may buy, &c.
at pleasure.

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NERSHIP.**

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Nor compound,
nor release
debts, &c.

THAT neither of the said parties shall during the continuance of the said copartnership, or after the expiration thereof, and before the copartnership accounts shall be fully adjusted, compound any debt or debts due, or growing due to the said joint trade, or sign any letter of licence, or the certificate of any bankrupt, without the consent in writing of the other [*or* major part of the others] of them, nor without such consent, release or discharge any debt or demand due to the said trade (1), or deliver up any security belonging thereto, without receiving the full amount or value thereof (customary abatements thereout only excepted), nor do any other act or thing

unless restricted by express agreement; see ——— v. Layfield, 1 Salk. 291; Fox *et al.* Assignees v. Hanbury, Cowp. 445; it is frequently prudent to insert a clause of the above kind, in restraint of such unlimited power.

Merchants.

If the parties be merchants, there may be added,

“AND further that none of the said parties shall or will at any time or times during the said copartnership consign or send over any goods, wares, or merchandises whatsoever belonging to the said joint trade, to any place or places beyond the sea, other than what the greater number of the said copartners shall conclude or agree upon.”

One partner
may release
debts, &c.

(1) Although one copartner cannot, in general, bind his copartner by deed, see *ante*, p. 45, n. (2), and agreements of composition with creditors, and releases of debts, are usually by deed; yet as deeds of this kind (being of a commercial nature) are exceptions to the general rule, see Duff v. E. 1 Comp. 15 Ves. jun. 213, *sed vid.* Hawkshaw v. Parkins, 2 Swans. 539, the covenants here inserted, that neither will compound or release any demands of the copartnership, without the other's consent, are extremely proper.

whereby any money or effects of the said copartnership may be delayed in payment or withholden from the said joint stock, except only in such cases of emergencies as in the opinion of arbitrators, upon reference to them made, as hereafter mentioned, shall be judged to have been expedient. AND that each of the said parties shall answer and pay to the capital stock of the said copartnership, the full amount or value of every debt or security for which he shall, without such consent as aforesaid, give any such release or discharge, or otherwise be the means of the payment or satisfaction thereof being delayed.

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THAT neither of the said parties shall at any time during the said copartnership, without the consent in writing of the other [or major part of the others] of them, confess or execute any statute, recognizance, judgment, warrant of attorney; nor become bail or surety for any person or persons whomsoever; nor discount any bill of exchange or promissory note with the copartnership or his own property, exceeding the amount of £ , nor subscribe any policy of insurance, as an insurer or underwriter, nor speculate in the public funds by buying, selling, or making bargains for time, or in any other manner whatsoever than for ready money, nor purchase or contract for any public loan or lottery, or any share or interest therein, exceeding one single share or ticket; nor enter into any other uncertain or speculative concern whereby the capital or joint stock of the said copartnership, or the share or

Neither party
will become
bail.

Nor engage in
speculations.

Nor do any
thing whereby
the copartner-
ship property
may be pre-
judiced.

**COPART-
NERSHIP.**

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Neither party
will assign or
mortgage his
share.

interest of either of the said parties therein, or other his estate, property, or effects may be put to risk or hazard.

AND IT IS HEREBY FURTHER AGREED AND DECLARED, that notwithstanding any thing hereinbefore contained, neither of the said parties shall at any time sell, mortgage, pledge, assign, or otherwise dispose of, or part with (1), (except by his last will and testament, or other writing to take effect after his decease, in pursuance of the provision hereafter contained) to any person or persons whomsoever, his share or proportion of or

If either party
dispose of his
interest, the
other to have
the refusal.

(1) If either party is to be at liberty to dispose of his share of the trade, it is reasonable that the other party should have the refusal of it, in which case say,

“ THAT if either of the said parties shall be desirous of disposing of his share or interest in the said joint trade, he shall be at liberty so to do upon giving calendar months previous notice to the other of them thereof, and in such case, the other of the said parties shall have the privilege of purchasing the same on the terms and conditions following, (that is to say), &c. (*state the terms*); and if the party so agreeing to purchase the same shall neglect to complete the said purchase, on the terms and conditions aforesaid, the party so disposing of his share shall be at liberty to dispose thereof to any other person or persons who shall have been regularly brought up to the said trade or business of upon his or their executing a proper deed, or other instrument to subject himself or themselves to the performance and observance of the several terms, stipulations, and agreements herein contained, to which the party disposing of his share would have been liable, if he had continued in the said copartnership.”

in the said joint trade, or any part thereof, or of his gains, profits, or other advantages therein, or to be derived therefrom, without the consent in writing under the hand [*or* respective hands] of the other [*or* major part of the others] of them first obtained for that purpose (1).

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(1) If either party is to have the privilege of introducing a son into the business, add,

Either partner
to be at liberty
to introduce a
son into the
business.

“THAT either of the said parties shall be at liberty and have full power to introduce a son, or son-in-law, as a partner in the said trade or business, and to grant and assign to him such part or share of him the said party, of and in the said joint stock and business as he shall think proper, subject to the several terms and conditions of the copartnership herein contained, and without prejudice to the interest of the other of the said parties.”

If it be agreed that the senior (or other partner) shall be at liberty to retire upon an annuity payable to him, add,

One partner to
be at liberty to
retire

“AND that in case the said (*one partner*) at any time before the time hereby limited for the continuance of the said copartnership shall be desirous of retiring and relinquishing the said business, and shall assign and give up his share and interest in the said joint trade to the said (*other partner*), he the said (*first partner*) shall be at liberty so to retire from the same, and then and in such case it is hereby agreed and declared, and the said (*second partner*) for himself, his heirs, executors, and administrators doth hereby covenant and promise to and with the said (*first partner*) his executors, administrators, and assigns, that he the said (*second partner*) shall and will well and truly pay, or cause to be paid, unto him the said (*first partner*) or his assigns, an annuity or clear yearly sum of £ during the joint natural lives of them the said (*partners*) by equal quarterly payments on the day of &c. free from all deductions whatsoever; and [also the sum of £

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If either party
conduct himself
contrary to the
articles, the
copartnership
to be void.

AND IT IS HEREBY FURTHER AGREED AND DECLARED, that in case either of the said parties, during the continuance of the said partnership, shall (1) [depart the realm for any crime, or other offence, or accusation, or suspicion of such, or

as or for the capital stock of the said (*first partner*) in the said joint trade within two years thereafter]; and further that he the said (*second partner*) at the request of the said (*first partner*) and upon his so relinquishing and assigning his share and interest in the said joint trade to or in favour of him the said (*second partner*) as aforesaid, shall and will execute and deliver unto the said (*first partner*) a bond in a sufficient penalty for payment of the said annuity or yearly sum, [and sum of £ respectively]: and also a warrant of attorney for the confession of judgment upon the said bond in such manner and form as is usual or proper in like cases."

Annuity must
not vary as to
profit and loss.

The above annuity, it should be observed, is to be a fixed annual sum, and not a sum variable according to the actual profit of the trade, as the retiring party would then come within 21 Jac. 1, c. 19, s. 11, and be considered as still a copartner; *ex parte* Colebeck, 1 Buck. 48.

Clause providing
for dissolution
of copartnership,
on breach of
agreements,
should be fully
set out.

(1) Where the copartnership is for a certain term of years, it cannot be dissolved, unless provided for by the deed, without the consent of all the copartners, or by a court of equity for misconduct; *Sayer v. Blunt*, cited *Wats. Copar.* 382. This clause providing for the dissolution of the copartnership on the breach by either party of the stipulations agreed upon between them, is therefore proper, and it should particularly mention the several obligatory and prohibitory provisions contained in it, to prevent the possibility of either party availing himself of so important a power upon the construction of general words. Where, however, brevity is particularly desirable, the parts of the proviso which are within brackets (ending p. 55, marg. *) may be omitted, and the clause of arbitration be rested upon for an adjustment of any difference of opinion upon the subject.

shall become bankrupt (1), or insolvent in respect of his private estate, or shall suffer himself to remain in execution longer than three days, or after being arrested shall continue in prison or lawful confinement, for more than five days without procuring bail, or shall procure hired bail, or shall depart from his dwelling-house, or the place where the said joint trade shall be carried on, for the purpose of secreting himself from his partners or creditors, or shall permit any part of the copartnership effects to be taken in execution, or attached or sequestered for any debt to the amount of £100 or upwards, on his own separate account; or if he shall refuse to join in a reference to arbitration when thereunto required, pursuant to the agreement hereinafter contained, or to execute a

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(1) A copartnership will be dissolved by a commission issuing against the firm, or against either of the parties, a joint commission by taking the whole of the stock in trade, and a separate commission by vesting the share of the bankrupt in the assignees and destroying the joint estate; nor can the assignees, without the consent of the other of the parties, and a special order of the chancellor, continue the business, or disturb the solvent partners, *Allen v. Kelbre*, 4 Mad. 464. This dissolution does not however take place until the party is declared a bankrupt; but upon such declaration it has reference back to the bankrupt's estate at the time of his committing the act of bankruptcy. *Vid. ex parte Smith*, 5 Ves. jun. 295, and *Crawshay v. Collins*, 15 *ib.* 228; *Dutton v. Morrison*, 17 *ib.* 193; the assignees will nevertheless be entitled to a participation of the profits arising from the capital of the bankrupt in the business, so long as it continue there; *Crawshay v. Collins*, 15 Ves. 218; *Featherstonehaugh v. Fenwick*, 17 *ibid.* 309; and also to any part of the capital agreed to be paid into the business by a solvent party, and not yet paid, *Akhurst v. Jackson*, 1 Swans. 85.

Copartnership
determines by
bankruptcy.

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deed of reference, and a bond to abide the event thereof; or shall refuse to name an arbitrator; or (unless prevented by sickness or other unavoidable or reasonable cause) neglect to attend the arbitrators or umpire when named, at the times and places they or he shall reasonably appoint, with all documents and papers in his possession or power relative to the matters in submission; or shall wilfully neglect to keep up a regular communication with his copartner, on the business of the said copartnership, when requisite or expedient; or shall absent himself from, or refuse to assist in the conduct of, the said business without such cause as aforesaid, for the space of months in any one year, contrary to the request of the other of them; or shall be concerned in the said business of , or in any branch thereof, otherwise than pursuant to these presents; or shall contract any debt, or draw, accept, or indorse any bill of exchange, or note of hand, or otherwise use, or lend, or give, or engage the credit of the said copartnership to the amount of £100 in any one year, otherwise than in the regular course of transacting the business thereof, and for a sufficient consideration or equivalent, or contrary to the admonition or request of the other of them; or compound or release any debt or security due, or belonging to the copartnership; or give any letter or licence, or sign the certificate of any bankrupt; or mortgage, assign, or otherwise part with his share or interest in the said joint trade, except as hereinbefore is

provided; or shall purchase at any one time, any stock or goods for the carrying on the said joint trade or copartnership, to the amount or value of £ or upwards, without such consent of the other [*or* major part of the others] of them, as is hereinbefore required; or shall wilfully omit to enter in the books of the said copartnership, any sum or sums, exceeding in the whole the sum of £ , received by him on account of the said joint trade, for the space of days after receiving the same; or shall, without the consent of the other of them, take out of the said copartnership stock in any one month, to the amount of £ beyond the sums hereinbefore allowed to him; or shall become bound or bail, or surety, with or for any person or persons whomsoever; or shall speculate in the public funds, by purchasing for time or otherwise than for ready money, or in any public loan, or in lottery tickets, (save as aforesaid), or shall underwrite or become answerable for any marine insurance or other speculative concern or undertaking, or shall game in any manner howsoever to the amount of £ at any one time; or shall suffer the capital stock or effects of the said copartnership to be attached, in any manner howsoever, for or on account of his own conduct or private debts or engagements*,] or do, omit, or occasion, or cause, permit, or knowingly suffer to be done any [other] matter or thing whatsoever, contrary to the true intent and meaning of any or either of the stipulations, agreements, or provisions in these presents con-

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tained, or whereby the said joint trade shall or may be in any otherwise prejudiced (1), then and in any or either of the said cases, it shall be lawful for the other [*or* major part of the others] of the said parties, at any time within the space of twenty-one days next after any such act, default, matter, or thing, as aforesaid, shall have occurred, or shall have come to his [their or any or either of their] knowledge, to give to the party so acting or offending, notice in writing, (either by leaving the same at his dwelling-house, or last most usual place of residence or abode, or affixing the same in any conspicuous part of the counting-house or place of carrying on the said joint trade), of his [*or* their] desire to dissolve the said partnership, and thereupon and immediately thereafter or at such other future time, as in the said notice shall be named, the said copartnership shall cease and determine in like manner as if the party so offending or acting were then actually dead, or the whole of the term hereinbefore limited for the duration of the said copartnership had expired by effluxion of time, and the party [*or* parties] giving

Marriage.

(1) If either of the copartners be a feme sole, it may be proper to extend the cases of dissolution to her marriage, as it has not been yet settled whether such an event would of itself be a dissolution of the copartnership without an express agreement of the parties to that effect, and the introduction into the firm of one wholly unacquainted with the nature of the business might be attended with great inconvenience; in the case supposed therefore add,

“ Or if the said (*feme covert*) shall marry.”

such notice shall be at full liberty, and he [and they] is [and are] hereby authorised forthwith (unless the party to whom the said notice shall be given shall by writing under his hand require the matter in question to be referred to arbitration) to advertise and make known the same in like manner as is hereinafter provided, in case of the expiration of the said copartnership by effluxion of time; but which said dissolution shall nevertheless be without prejudice to the balance due to, or from either party up to that time, and to the remedies which either of the said parties may or otherwise might have had against the other [or others] of them, for recovering thereof, or for the breach or non-performance of any of the articles, covenants, clauses, or agreements herein contained, at any time before the giving, leaving, or affixing such notice as aforesaid (1). Provided al-

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(1) Where liberty is given to either party to dissolve the copartnership on notice, say,

Liberty for
either party to
quit the part-
nership on
notice.

“AND IT IS HEREBY FURTHER AGREED AND DECLARED by and between the parties hereto, that notwithstanding any thing hereinbefore contained, either of the said parties shall be at liberty to retire from the said copartnership at the Christmas next preceding the expiration of the first years of the said term of years hereinbefore limited for the determination thereof, upon giving six calendar months previous notice to the other [or others] of them, in writing under his hand of his desire so to do.”

When a copartnership is dissolveable on notice to be given by either party, the term and terms of such notice must be strictly observed. Its effects would also probably be restrained by a court of equity, if it were given at a period of the copartnership

Dissolution of
copartnership.
on notice,
should be at
Christmas.

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ways nevertheless, that in case of the dissolution of the said copartnership by any such notice for the breach of any of the covenants or agreements herein contained, the party giving such notice or committing such breach shall not for the space of years next thereafter set up or carry on or cause to be set up or carried on the said trade of within the distance of miles (1) from the place where the said copartnership business shall then be carried on.

On death of copartner before first half-yearly account, his capital to be returned.

AND IT IS HEREBY FURTHER DECLARED AND AGREED, that in case either of the said parties shall happen to depart this life (2) before the first half-

when a dissolution would be materially detrimental to the other party; it will be proper, therefore, to provide that the notice should expire at Christmas, as the annual accounts will then be wound up, and the difficulty of making a rest at a broken period of the year be avoided; but if the parties desire to be at liberty to quit at any period of the year, add,

Either party to quit at pleasure.

“ In which case the party so quitting the said copartnership, shall be entitled to receive no more than the balance of capital and profits which shall appear due to him on the then last day of settling the copartnership accounts, without any interest being computed thereon, and without having any allowance made to him for or in respect of the said joint trade, except only for such subsistence-money as hereinbefore is mentioned.”

(1) That a stipulation, prohibiting a retiring party to carry on the business within a given distance, will be good, see *Chesman v. Rainby*, 3 Bro. P. C. 349, and *ante*, p. 11, n. (1), also *post*, No. XIII. notes.

Copartnership dissolves on death of either party.

(2) As a copartnership will naturally dissolve on the death of either of the parties, so far as concerns the interest of the party dying, although it were for a definite term of years yet unexpired, *Gillespie v. Hamilton*, 3 Mad. 251, and not devolve

yearly settlement of the said copartnership accounts shall take place, the survivor of them shall be chargeable with the amount which the party deceased shall have brought into the capital stock, with an allowance of £ per cent. thereon, from the day of the date of these presents to the day of his decease, in lieu of interest and of profits of trade, and the surviving party shall pay the gross amount thereof, (with interest after the rate of £5 per cent. per annum, from the day of his decease) within the space of calendar months next thereafter, by instalments or equal payments of £ each, the first thereof to be made within calendar months, the second thereof within calendar months, and the last or remaining payment thereof within calendar months next after such decease.

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THAT if either of the said parties shall die after the first half-yearly settlement of the accounts of the said copartnership, and before the expiration of the term of years hereby limited for the duration thereof, the survivor of the said parties shall take the share or proportion of the

If either party die after the first half-yearly settlement, the other to take the stock.

upon his representatives, unless it be otherwise declared by the articles; *Pearce v. Chamberlain*, 2 Ves. 33, it is proper that the deed of copartnership should express the intention of the parties with respect to that event, and such other matters as would require adjustment on its happening before the expiration of the term stipulated for its continuance; as to which see *Browne v. Letton*, P. Wms. 140; 10 Mod. 20, S. C. 2 Eq. Ca. Ab. 5, pl. 6, 722, pl. 2, S. P.; *Coxwell v. Bromett*, cited *Wats. Copart.* 362; *Crawshay v. Collins*, 15 Ves. 226; and see *ante*, p. 19, n. (2).

**COPART-
NERSHIP.**

*Deed of
Copartnership
between Traders.
(Full Form.)*

Amount to be
paid by three
instalments.

party so dying, of and in the said capital stock, goods, wares, merchandises, debts, and effects, which at the time of the decease of the party so dying shall belong to the said joint trade (1), and shall pay unto the executors or administrators of the party deceased the full and just value thereof, according to the last half-yearly account, if any, which shall have been made of the copartnership effects, and a fair appraisement of those which shall have since accrued, such appraisement to be made by three indifferent persons to be chosen, the one by the surviving party, one other by the executors or administrators of the party deceased, and the third person to be named by such two first nominees, and the amount thereof to be paid in the manner following, (that is to say) one-third part thereof with interest upon the whole thereof, after the rate of £5 per cent. per annum, from the day of the decease of the party so dying, at the end of six calendar months next after his decease; one other third part thereof, with interest after the rate aforesaid, upon the remaining two-third parts thereof, at the end of twelve calendar months next after

Stock must be
sold on dissolu-
tion of copart-
nership.

(1) On the dissolution of a copartnership, the parties continuing to carry on the trade are not entitled to take the stock, &c. at a valuation, without a previous agreement between the parties to that effect, as the other party may require them to be sold; *Crawshay v. Collins*, 15 Ves. jun. 226; *Featherstonehaugh v. Fenwick*, 17 *ib.* 298. 311, which might be extremely detrimental to the continuing copartners; and see *ante*, p. 58, n. (2).

such decease, and the remaining third part thereof, with interest for the same after the rate aforesaid, at the end of eighteen calendar months next after such decease; AND in either of the said cases, for the better securing the said payments, it is hereby agreed that the surviving party shall, within one calendar month next after the decease of the party so dying, execute and deliver to the executors or administrators of the deceased party, a bond or bonds, under a sufficient penalty or penalties, to the executors or administrators of the party so dying, in the usual or other proper form, with one or more surety or sureties for paying the same, at the times, and in the manner, and with such interest as aforesaid; AND also for saving harmless and indemnifying (1) the heirs, executors, and administrators (2) of

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NERSHIP.**

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(Full Form.)*

And to be se-
cured by bond,
&c.

(1) As a retiring copartner will, notwithstanding a dissolution of the copartnership, and an assignment of his share to the other parties, continue liable for the debts and engagements of the house contracted prior to the time of dissolution, *Smith v. Jameson*, 5 Durnf. and E. 603; *ex parte Fell*, 10 Ves. jun. 347; a covenant providing an indemnity against such debts, &c. is very requisite; and see *Boardman v. Mossman*, 1 Brow. Ch. Rep. 68; *ex parte Clowes*, 2 *ib.* 595: in the event, however, of the bankruptcy of the covenanting party, this covenant will not exempt the retiring party from liability on account of joint debts previously incurred; *ex parte Freeman*, 1 Buck. 471; *ex parte Williams*, *ib.* 13.

Retiring partner
liable to debts,
&c.

(2) Although the representatives of a deceased partner are not liable at law to the copartnership creditors, yet as they may,

Representatives
of deceased
party liable.

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*Deed of
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(Full Form.)*

In default of
bonds given,
executors to
enter, &c.

such deceased party, and his and their lands and tenements, and goods and chattels, of and from all debts and demands which at the time of his decease were owing by the said parties on account of the said joint trade, and of and from all actions, suits, damages, and expenses, for or in respect of the same or any of them. [And in default of such bonds being given as aforesaid, it shall be lawful for the executors or administrators of the party dying, to take possession of and receive all the estates and effects, goods, wares, debts, and securities, of or belonging to the said joint trade, and to sell and dispose of the same at their discretion; and by and out of the monies to be thereby produced, in the first place to pay and satisfy all debts due from the said joint trade, and in the next place to pay and satisfy the amount of the sums for which such bonds as aforesaid were to have been given, and pay over the surplus of the said monies to the surviving party, his executors, administrators, or assigns; and in such case all and every the said goods, wares, debts, estate and effects of the said copartnership, shall be assigned to or otherwise vested in the executors or administrators of the said party deceased, by the party surviving, for the purposes aforesaid, and the surviving party, his executors,

in some cases, be so in equity, see *Stevenson v. Chiswell*, 3 Ves. jun. 506, it is proper to extend the covenant to their indemnity.

or administrators, shall not nor will receive or take possession of the same, or of any part thereof, but shall and will permit, and suffer, and authorise, and empower the executors or administrators of the said deceased party, to receive, take, sell, and dispose thereof.] AND upon the delivery of such bonds as aforesaid, the heirs, executors, or administrators of the said deceased party shall and will by such good and sufficient conveyances, and other assurances in the law, as the counsel of the surviving party, his heirs, executors, administrators, or assigns respectively, shall require or advise, at his and their own costs and charges, convey, assign, and assure the part or share, and estate, right, title, interest, claim, and demand of the said deceased party, of and in the messuages, lands, tenements, hereditaments, stock, debts, and effects, and profits and gains, which at the time of his decease were in or belonging to the said joint trade, unto the said surviving party, {or parties} his executors, administrators, or assigns, as he or they shall direct or appoint, except as to all such bad and desperate debts owing to the said joint stock, as shall not have been reckoned as a good estate, or included in such half-yearly or other accounts as aforesaid, which debts shall with all convenient speed be divided and distributed between the surviving party, and the executors or administrators of the party deceased, according to the shares and proportions of the said parties respectively in the capital stock, either by mutual agreement, or in default thereof,

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On bonds being
given, the re-
presentatives of
deceased party
to assign, &c.

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Intermediate
profit and loss
to accrue to the
survivor.

by lots; and thereupon the said surviving party, and the executors and administrators of the deceased party, shall give unto each other full power and authority to get in and recover the shares which shall be so taken by the said parties respectively.

AND in such case, all the profit and loss which shall arise upon the said partnership trade, after the day of the date of these presents, until the death of such deceased party, shall belong to and be received and borne respectively by the surviving party [*or parties*, according to their or his original share or shares in the said capital,] and such surviving party [*or parties*] who shall enter into a bond at his [*or their*] own expense, in a reasonable penalty for effectually indemnifying and saving harmless the executors or administrators of such deceased party, from and against all debts and engagements respecting the said joint trade, they the said executors or administrators of such deceased party, transferring, assigning, and assuring, to the survivor [*or survivors*] of the said parties, the share or shares of the deceased party of and in the copartnership effects, subject only and without prejudice to such sum or sums, as shall from time to time be due upon the bond so agreed to be executed as aforesaid (1).

Several part-
ners.

(1) If there be three or more copartners, add,

“AND in such case also, the share of the deceased party in the said copartnership effects, shall be divided

THAT at the expiration of the term of
years hereinbefore limited for the duration of

COPART-
NERSHIP.

*Deed of
Copartnership
between Traders.
(Full Firm.)*

amongst the surviving parties equally, in case such survivors, within the spaces or times hereinbefore prescribed for payment of the debt or debts due to him, shall equally contribute towards such payments; but in case such contributions be not equally made, or if some or one of the said parties fail so to contribute, then such share shall go and belong solely to the parties or party contributing, according to the rate and extent of their or his contribution or respective contributions."

And where there are several partners it may also be provided, Several partners.

"That the decease of any or either of the said parties, during the period hereinbefore limited for the continuance thereof, leaving any two of the said partners him or them surviving, shall not dissolve or impeach the copartnership, as between the partners so surviving."

If part of the premium advanced by a coming in partner is to be returned in case of his decease in a short space of time, add,

"PROVIDED always, and it is hereby further covenanted, declared, and agreed by and between the parties hereto, to be the true intent and meaning of these presents, that in case the said (*one copartner*) shall depart this life at any time within the period of years, to be computed from the day of last past, the said (*other copartner*) his executors or administrators shall and will, within the space of twelve calendar months from the time of the decease of the party so dying, refund and well and truly pay, or cause to be paid, unto the executors, administrators, or assigns of the party deceased, such sums of money for rateable proportion of the said sum of £ , as is hereinafter mentioned, that is to say, the full and just sum of £ of lawful money of Great Britain, and in case the said (*same copartner*) shall depart this life within

*Proviso for re-
turning part of
premium ad-
vanced in case
of the death of
admitted part-
ner.*

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NERSHIP.**

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between Traders.
(Full Form.)*

At the expira-
tion of the term,
one of the par-
ties to have re-
fusal of stock,
&c. at a valua-
tion.

the said copartnership, if the said copartnership shall so long continue, and the said (*first or other party*) shall be desirous to continue to carry on the said trade, he shall be at liberty to take all the part, share, or proportion of the said (*second party*) of and in the houses, warehouses, estate, and premises belonging to the said joint trade or business (1), and of the capital stock, goods, debts,

the space of six calendar months from the said day of , then the sum of £ of like lawful money, and in case of the decease of the said within the space of twelve calendar months from the aforesaid day of , the said several sums to be paid, and in the mean time secured in the manner following, that is to say," see *supra*, p. 60, marg. *.

On determina-
tion of copart-
nership, parties
to cast lots for
the stock, &c.

(1) Sometimes the parties agree that on the determination of the copartnership they will cast lots for the stock in trade, in which case say,

"THAT the said parties shall at the time of making such final account as aforesaid, cast lots who shall have, possess, and enjoy the said messuage, or tenement and premises whereon the said joint trade shall be then carried on, together with all raw or unmanufactured materials of or belonging to the said copartnership; and that the party to whom the same shall, by such lot, fall or appertain, his executors or administrators, shall within calendar months then next thereafter, pay or cause to be paid unto the other of the said parties, his executors or administrators, one moiety or half part of the sum at which the lease of the said messuage or tenement for the then remainder of the said term of years, together with such materials as aforesaid, shall be appraised and valued by two indifferent persons, and a third person, in case of disagreements between them, to be chosen in the manner hereinafter provided in cases of reference to arbitration."

and effects thereof, at and for such price and prices, sum and sums of money as the same premises respectively shall be appraised or valued at, by indifferent persons to be chosen in the manner hereinafter directed with respect to arbitrators in case of disputes happening between the said parties hereto, the amount of which said appraisement and valuation, (after deducting thereout such monies as the said party may have received out of the said joint trade, since the last yearly settlement of accounts, or otherwise owe thereto) shall be paid in the manner following, (that is to say) one-third part thereof, together with interest upon the whole thereof, after the rate of £5 per cent. per annum, to be computed from the time of expiration of the said copartnership term, at the end of six calendar months next after such expiration; one other third part thereof, with interest after the rate aforesaid, upon the remaining two-thirds thereof, at the end of twelve calendar months next after such expiration, and the remaining third part thereof, with interest for the same, after the

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If the premises where the business is carried on are to return to an original partner, say,

“THAT the messuage, or tenement and premises in or upon which the said joint trade shall be carried on, shall at the end, dissolution, or other determination of the said copartnership, with the appurtenances, belong and remain to the said (*original partner*) his executors or administrators, to and for his and their own use and benefit, as his and their separate property and estate.”

At the end of copartnership, premises to belong to the original partner.

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If both decline,
the stock to be
sold.

rate aforesaid, at the end of eighteen calendar months next after such expiration; and the party continuing the said trade shall give the like bond, security, and indemnity, and the like power in default thereof, as is hereinbefore provided in the event of the decease of either of the said parties, before the expiration of the said term, and in case the said (*first party*) shall decline to take the said copartnership stock upon the terms and conditions aforesaid, then the said (*second party*) shall be at liberty to take the same in and upon the same or like manner and terms in all respects. PROVIDED ALWAYS, that if both [*or all*] of the said parties shall, at the end of the said term of years, refuse or decline to make such purchase of the share or proportion of the other or others of them, of and in the said joint stock, as aforesaid, then and in such case the whole of the goods, merchandise, joint stock, estate, and effects, of or belonging to the said copartnership, together with the premises where the same shall be carried on, shall upon the expiration of the said term of years, or as soon as may be thereafter, be sold and disposed of by public auction or by private contract, as may be agreed upon between the parties; and the money arising from such sale shall, in the first place, be applied in payment and satisfaction of such sum or sums as either of the said parties shall have advanced or lent unto the said joint trade, with interest after the rate aforesaid, and of all debts and other claims and demands which shall be then due from the said joint stock to the

general creditors thereof; and upon and after full payment and satisfaction thereof, and of all expenses attending the sale and disposition of the said premises, the surplus or residue of the said monies shall be paid unto and be equally divided between the said parties, or their respective executors, administrators, or appointees, according to their respective shares and proportions of and in the said joint stock, and all debts and other claims and demands which shall be then due and owing to the said copartnership, and all securities for the same, which shall be deemed good and recoverable, shall be assigned to some person or persons to be appointed for that purpose by the said parties, their respective executors, administrators, or appointees, with full power to collect and receive the same debts and effects, upon trust, and with directions, (after deducting the expenses of collecting the same, and a reasonable commission, not exceeding £5 per cent. upon the amount thereof,) to pay and divide the sums so to be collected, as often as the same shall amount to the sum of £100, unto and between them the said parties, their respective executors, administrators, or appointees, in proportion to their respective shares and interests aforesaid.

THAT at the end or other sooner determination of the said copartnership, by the means or events hereinbefore mentioned or referred to, notice thereof shall be given in the London Gazette, and two of the principal London newspapers; and also by letter to the several correspondents

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NERSHIP.**

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On determina-
tion of copart-
nership, notice
to be given to
their customers.

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Goods con-
signed after
determination
of copartner-
ship to be on
account of con-
tinuing party.

and customers of, and other the dealers with the said parties, in their joint names and at their joint expense (1).

AND IT IS HEREBY AGREED, that all goods, wares, and merchandise, which shall have been consigned by any person or persons to the said parties on account of the said joint trade, shall upon such determination of the said copartnership, be delivered to such of the parties as shall intend to continue the said trade, upon his paying to the other of the said parties the expenses incurred on account thereof, and also paying unto the copartnership stock all such debts or balances of accounts as shall be due to the said joint trade from the owner or consigner of such goods, wares, or merchandise; but in case neither of the said parties shall continue to carry on the said trade or business, then the said goods, wares, and merchandise shall be so disposed of as hereinbefore is provided in case of the decease of either of the said parties, before the expiration of the said copartnership term.

Subsequent re-
mittances to be
received on
joint account.

PROVIDED NEVERTHELESS, that all remittances of or for any money by or from any of the correspondents or customers of the said parties, on account of the said joint trade, which shall be entered in the books of the said copartnership before the determination thereof, shall be paid and received upon the joint account of the said parties, notwithstanding such remittances, or any

Notice.

(1) As to the propriety of giving notice to customers, see *post*, No. XIII. notes.

drafts, or securities for the same, shall not have been actually paid or received until after the determination of the said copartnership. AND further, that if either of the said parties, after the determination of the said copartnership, shall give any fresh or further credit to any person on the copartnership account, such partner shall take the same upon himself, and the amount of such credit shall be debited to his account, as so much received by him in part of his share of the copartnership effects.

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Credit given
after end of
partnership, to
be at the risk of
the person cre-
diting.

PROVIDED ALSO, and it is hereby further agreed and declared by and between the parties hereto, that in case at any time hereafter it shall be found or conceived by the said parties, [or the major part of them,] or the counsel in the law (being of the degree of a barrister) of either of them, that these presents, or any of the covenants or agreements herein contained, are or is in any part defective, or not sufficiently clear to explain the real intention and meaning of the said parties, or that the terms and agreements hereby entered into are too restrictive, or too loose, or vague, and it shall be deemed expedient by the said parties, [or the major part of them] or by such counsel in the law as aforesaid, of either of them, that the same shall be varied or explained, then and in such case they the said parties shall and will join in and execute, at the copartnership expense, or at the expense of the party or parties requiring the same, such further deed or deeds, or other

Further
assurance.

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NERSHIP.**

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Disputes to be
referred to ar-
bitration.

writing or writings, as the counsel in the law of the said parties or party shall reasonably advise.

AND IT IS HEREBY FURTHER DECLARED AND AGREED (1), that if at any time during the said copartnership, or after the expiration thereof, and before the final settlement of the accounts of the same, any dispute or question shall arise between the said parties or between either [*or any or either*] of them, and the representatives of the other [*or of any or either of the others*] of them relative to the concerns of the said joint trade, not herein particularly or explicitly expressed or provided for, or the construction of these presents (2), or of any award (3) to be made in pur-

Concise form.

(1) A more concise form of reference to arbitration may be found, if desired, *post*, No. IV.

Arbitrators may
decide questions
of law.

(2) Arbitrators being judges appointed by the parties themselves, it will be found that matters of law, as well as of fact, may be made the subject of arbitration; and even if the arbitrators themselves choose to decide upon a point of law, they may do so, and their decision will be binding upon the parties, although the award be unreasonable, or even contrary to law; *Ching v. Ching*, 6 Ves. 282; *Young v. Walter*, 9 *id.* 364; *Wood v. Griffith*, 1 Swans. 53; 1 Wils. 34; *Staff v. Andrews*, 2 Mad. 6; unless it be a plain and obvious error, in which case the award may be set aside on the ground of presumptive fraud, or unless the principles upon which it was made be expressly stated in the award, in which case they may be made the subject of inquiry and falsification; see 1 Chit. 674; see also notes to deeds of submission to arbitration, &c. 1 WILD'S SUP. Nos. XVI. XVII. XVIII. XIX.

(3) In consequence of the doctrine mentioned in the last note, it is proper that provision should be made for referring the subject of the award itself to arbitration, where ambiguous or the like.

suance hereof, or with respect to any irregular or immoral behaviour or conduct, or the lunacy or other incapacity of either of the said parties, the same shall (1) within fourteen days next after request in writing shall be made to the other [or others] of the said parties, his [or their] executors, administrators, or appointees, and signed by the person or persons making such request, be referred to the arbitration or decision of two indifferent persons, one to be named by each of the parties in difference, and in default of either of the said parties naming an arbitrator within seven days next after such request shall have been made to him for that purpose, by the same being affixed in some conspicuous part of the counting-house of the said copartnership, or being delivered at the last or most usual place of residence of such party, or in case of his being a lunatic, to the committee of his estate, or being under any other disability, to the person or persons acting for or on his behalf, then the subject of every such dispute or difference may be reduced into writing and signed by the other of the said parties, and be referred to

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(1) If there be more than two copartners, it is sometimes agreed that disputes shall be determined by the major part of the copartners, in which case say, Several
copartners.

“ Shall be decided and finally determined by the voices and opinions of the major part of the said copartners, and their respective representatives, such representatives having together, if more than one, but a single voice or vote; but in case there shall be an equal number of opinions and votes upon any such question or questions, then the same shall,”
&c. *as above.*

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Arbitrators
may appoint
an umpire.

the arbitration of two indifferent persons to be by him [*or them*] alone named (1), notice whereof in writing shall be given in the manner aforesaid, to the party or parties so neglecting or refusing, his or their committees or agents, and the persons so to be named shall be as competent to act in the premises as if they had been appointed in the manner hereinbefore first directed; and in either of the said cases, if the arbitrators who shall be so named, shall not agree on an award, or if, before any such disagreement (2), they shall think

Parties not
compellable to
name arbitrators

(1) It seems that an action cannot be maintained against a person for refusing to nominate an arbitrator in pursuance of an agreement for a reference, *Tattersall v. Groote*, 2 Bos. and Pul. 131, which makes this provision, that on his refusal the other party may name for him, extremely proper.

Arbitrator to
choose another
referee.

Sometimes the arbitrator named by one of the parties is, in case of the refusal of the other to name, allowed to choose a second referee, in which case say,

“AND be referred to some fit person to be an arbitrator on behalf of the person making such request, which said arbitrator shall and lawfully may, by any writing under his hand, appoint some other person to act as arbitrator for the other party [*or each of the other parties*] so refusing or neglecting, to whom notice thereof shall forthwith be given in the manner aforesaid, and the persons so to be named shall be competent,” &c. *as above*.

Umpire.

(2) This power for arbitrators to choose a third person to assist them immediately upon their entering upon their deliberations frequently (by ensuring a majority) saves much time and anxiety to the parties; and it may be observed that such umpire must be chosen by arbitrators deliberately on an exercise of their judgment, and not by chance, as by drawing lots, which would vacate his authority, unless submitted to by the parties interested, with a knowledge of the mode in which he was chosen; *Wells v. Cooke*, 2 Barn. and Ald. 218; and see *Neale v. Ledger*, 16 East, 51.

proper to appoint a third person to assist them in their decision, then they shall, by writing under their hands, appoint any indifferent person for that purpose, or to be an umpire in or concerning the matters in reference; AND in case such referees cannot agree upon an award, and shall refuse or decline to appoint an umpire for the space of one calendar month next after the matter shall have been to them referred, then such person as the attorney or solicitor-general for the time being shall appoint, on application made to him for that purpose, by the party or parties signing such request as aforesaid, shall be an umpire in or concerning the premises. AND it is hereby declared, that such arbitrators or umpire shall have full power and authority to dissolve (1) the said copartnership, or to dismiss either of the said parties therefrom, and to make any orders and regulations which they or he shall think proper, as to the time and terms of such dissolution or dismissal, and also as to the time and manner in which the accounts of the said partnership, and of the said parties respectively, shall be settled and adjusted, and the balance or balances thereof paid to or by the respective parties, and also to order or award an assignment, release, or other conveyance from, or by either of the said parties, to the other of them, of all messuages and other premises wherein or whereupon the said

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If they cannot agree upon an umpire, attorney or solicitor general to appoint.

Arbitrators may dissolve copartnership.

(1) It is now settled, that arbitrators, under a general reference, have a power to dissolve the copartnership, *Green v. Waring*, 1 Blac. Rep. 475.

Arbitrators may award a dissolution.

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between Traders.
(Full Form.)*

Award to be
final.

joint trade or business shall be carried on, and of all or any of the stock in trade, and estate, and effects thereof (1). AND the award, order, or determination which shall be made by the said arbitrators or umpire, or any two of them concerning the premises referred to them or him, shall be final and conclusive upon the person or persons by or on the part of whom such reference shall be made, and his and their respective heirs, executors, administrators, and appointees (2), so that the same be made in writing under the hands and seals of the said arbitrators, or the hand and seal of the said umpire, or any two of them, within one calendar month next after reference shall be to them or him so made as aforesaid, or within such further time or period to or for which they, or any two of them, shall previously to the expiration of the said calendar month, in writing under their hands, have enlarged or postponed the time of making their award, and which postponement or enlargement they are hereby expressly authorised and empowered to make from time to time, at their

Arbitrators
may award a
conveyance.

(1) A right to real property will not pass, nor could formerly be affected by an award, lest the land should be aliened collusively without the consent of the lord of the fee; 1 Roll. Ab. 242; 1 Ld. Raym. 115, Co. Lit. 16 a. "But doubtless an arbitrator may now award a conveyance or release of land; and it will be a breach of the arbitration bond to refuse compliance." 3 Blac. Com. 16.

Award binding
on the parties.

(2) The award of arbitrators, if fairly given, and free from suspicion of fraud or partiality, is final and binding upon all parties interested, *Tittenson v. Peat*, 3 Atk. 529; *Routh v. Peach*, 2 Anst. 519.

discretion, so that the same do not exceed in the whole the term or period of three calendar months next after such reference shall be made to them, and that although all, or any, or either of the said parties shall have departed this life previously to the making such award (1). AND each of the said parties doth hereby agree for himself, his executors, administrators, and assigns, that he and they shall and will enter into a bond of submission for himself, his heirs, executors, and administrators (2) to the other [*or others*] of them, or his [*or their*] executors, administrators, and assigns, in the usual or other proper form, to observe and perform the said determination or award in all things, and that such reference or submission shall or may be made a rule of his Majesty's Court of King's Bench, at Westminster, on the application of either of the parties to the same reference, his or her executors, administrators, or

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between Traders.
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Parties to give
bond to abide
the award.

(1) The death of any party to a submission to arbitration before making the award annuls the authority of the arbitrators, unless it be otherwise agreed; *Cooper v. Johnson*, 2 Barn. and Ald. 394; *Chit.* 187; *Potts v. Ward*, 1 Marsh. 366; *Toussaint v. Hartop*, 1 Moor, 287.

Death of parties.

(2) As an agreement for reference to arbitration is in its nature revocable, 3 Blac. Com. 16, and will not preclude the parties from maintaining an action upon the subject of difference, 6 Ves. jun. 821; *Wellington v. Mackintosh*, 2 Atk. 569; *Michell v. Harris*, 4 Brow. Ch. Rep. 311; *Kill v. Hollister*, 1 Wils. 129, "It has now become usual to enter into mutual bonds, with conditions to stand to the award or arbitration of the arbitrators or umpire therein named;" 3 Blac. Com. 16.

Reference to
arbitration re-
vocable.

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NERSHIP.**

*Deed of
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between Traders.
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Parties to be
examined on
oath and pro-
duce papers.

No action to be
brought till
reference re-
fused.

appointees (1). AND likewise, that the several parties to such reference, shall and will respectively submit to be examined, &c. upon oath by, and answer on oath to, the said arbitrators or umpire, relative to the matters referred to the said arbitrators (2), and produce unto and deposit with the said arbitrators or umpire, if thereunto required, all accounts, writings, papers, and evidences in their respective custody or power, concerning the same. AND further, that no action (3), suit, or other proceeding at law or in equity, shall be commenced or prosecuted by either of the said parties, his heirs, executors, or administrators, against the other of them, his heirs, executors, or administrators, in relation to these presents or the said copartnership, until the party or parties who would be the proper person or persons to be defendant or defendants in such action,

Reference may
be made a rule
of court.

(1) By 9 and 10 Will. 3. c. 15, it is provided, "that all persons desirous to end a controversy for which the remedy is by personal action or suit in equity, may agree that their submission of the case to arbitration or umpire, shall be made a rule of one of the king's courts of record;" which should always be done, as by this means the witnesses to the matter in dispute may be examined on oath before the judge of the court of which the rule is obtained, and the parties refusing to abide by the award will be punishable as for a contempt of court; see *Lin-good v. Croucher*, 2 Atk. 396.

Arbitrators
may proceed
ex parte.

(2) If either party refuse to attend the reference, the arbitrators may proceed *ex parte*; see *Wood v. Leake*, 12 Ves. jun. 412.

(3) See *ante*, p. 77, n. (2).

suit, or proceeding, shall have refused or neglected to refer the matters in difference, pursuant to the agreement hereinbefore contained, or the arbitrators or their umpire shall have declined or neglected to make their or his award within the respective times hereby limited for that purpose.

AND that no action at law or suit in equity shall be commenced or prosecuted against the arbitrators or umpire, concerning his or their award or determination after the same shall be made, unless some manifest fraud shall be discovered therein. AND moreover, that it shall be lawful for either of the said parties who shall have made such request as aforesaid, to have the matter or matters in difference decided by arbitration, or his executors or administrators to produce and plead the same in bar to, or discontinuance and dismissal of any action, suit, or proceeding, which shall or may be brought or instituted by the said party, his executors or administrators, to whom the same shall have been made, and which request being so pleaded or produced, shall, so far as the rules of law or equity will permit, be a complete and effectual bar, discontinuance, and cause of dismissal accordingly. AND (1) it is

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Request of
reference may
be pleaded in
bar to action.

If no award
made, chancery
or exchequer to
possess the
power of arbi-
trators.

(1) If there be more than two copartners, add,

“ THAT when any such dispute, doubt, or difference as aforesaid, shall arise between any two or more of the said copartners, notice in writing shall be by them, or one of them, left at the place of or most general or usual place or places of residence of the other or others of them, or be committed to the care of the post office, so addressed to

Several co-
partners.

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hereby further agreed, that in case no award shall be made by the said arbitrators or umpire, within the time hereinbefore appointed for that purpose, the lord chancellor or vice-chancellor, or lord keeper, or lords commissioners of the great seal for the time being, or his honour the master of the rolls, or the barons of his Majesty's court of Exchequer, or other judge or judges, to or before whom any suit shall be depending respecting the said copartnership, or any of the transactions or dealings thereof, or of the covenants, the said reference shall be made a rule as aforesaid, shall have and may exercise all the personal authorities given, or intended to be given, to the said referees or their umpire, and that his or their determination, order, or decree, concerning the same, whether made judicially or extra-judicially, shall be binding and conclusive upon all persons who shall be parties to the said suit or proceeding, or to these presents, and their respective representatives; and that the said parties respectively,

Award to be
binding on
parties dis-
senting.

him or them respectively, to the intent that he or they the said party or parties respectively, may have the option of taking a part in the matter in difference, on either side. AND the party or parties who shall refuse, decline, or neglect to become a party or parties to the said reference, after such notice as aforesaid, shall be bound and concluded by all the proceedings thereon, and by the award or determination of the arbitrators or umpire relative thereto, in the same manner, to all intents and purposes, as if he or they had been a party or parties to the matters so in difference, and joined in referring the same."

and their respective heirs, executors, and administrators, shall and will perform and observe the determination, order, or decree, which shall be so made in all things, and the same, although extra-judicially made or given, shall or may be made a rule of the court in which such action, suit, or proceeding, shall be depending. [AND each of the said parties hereto doth hereby bind himself, his heirs, executors, and administrators, unto the other [and others] of them, his [and their] executors, administrators, and assigns, in the penalty (1) of £ of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency, for the true and faithful observance and performance on his and their part and parts of all and every the covenants, agreements, articles, matters, and things herein contained, which by him or them, or his or their executors or administrators, respectively, ought to be performed or observed, but which said penalty shall be without prejudice to any right of action, or suit or bill in equity, to which either of the said parties would or might have been entitled for or by reason of any breach] of

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Penalty or
nomine pœne
on default by
either party.

(1) The use of this penalty is to entitle the party injured by a breach of any of the covenants contained in the articles by the other party, to an action of debt for the penal sum, should circumstances render such an action preferable to an action of covenant on breach of the particular clause infringed upon. See *Duke of St. Albans v. Shore*, 1 Hen. Black. 270, and *Ashley v. Weldon*, 2 Bos. and Pul. 346; see also *ante*, Vol. I. p. 15, n. (30).

Penalty gives
action of debt.

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Expenses, &c.
of arbitration,
to be equally
borne.

covenant or agreement hereinbefore contained, if no such or other penal sum had been reserved or given.] AND it is hereby lastly agreed, THAT all reasonable fees and monies which any such arbitrator or umpire, as aforesaid, shall think proper to give to any counsel or others, for advice or directions in respect of the matters referred to him or them, and all other necessary expenses attending any such reference, arbitration, or award, shall (1) be borne and paid by each of the parties to these presents, or their respective representatives, in equal shares and proportions, and that all costs which shall be incurred relative thereto shall be reckoned as between attorney and client, and not as between party and party, in legal or equitable proceedings (2). IN WITNESS, &c.

Costs to abide
the event of
award.

(1) If it be agreed that the costs shall abide the event of the award, (and that such an agreement will be good, see *Wood v. O'Kelly*, 9 Ves. jun. 486), say,

“ Shall abide the event of the said award, and be paid by the party or parties by whom the same shall, by such arbitrators or umpire, be directed to be paid.”

Arbitrators
cannot award
costs.

And unless some previous agreement be entered into respecting the costs of the reference, the arbitrators will have no authority to direct by whom they shall be borne, *Candler v. Fuller*, Willes, 62, and they must be paid by both parties equally, *Grove v. Cox*, 1 Taunt. 165.

Costs to be as
between party
and party.

(2) Where a power to award costs is given to the referees, it should seem, that unless it be otherwise provided, such costs must be reckoned as between party and party, and not as between attorney and client; see *Marder v. Cox*, Cowp. 127; *Barker v. Timson*, 2 Blac. Rep. 953; *Whitehead v. Firth*, 12 East, 165; in which case each party might have costs to pay beyond those allowed on a taxation.

COPART-
NERSHIP.

(A). See *ante*, p. 59. If the executors or devisees of either party are to succeed to the copartnership, say,

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“ THAT in case either of the said parties shall depart this life during the said term of years hereby limited for the duration of the said copartnership, and shall by any writing under his hand and seal, to take effect upon his decease, or by his last will and testament in writing, nominate or appoint any person or persons to succeed him in the said copartnership, then the person or persons so to be appointed, and in default thereof, the executors or administrators of the party so dying, shall or lawfully may have and enjoy the part or share of the party so dying, of and in the said joint trade, and the monies, debts, and effects thereof, either for himself or themselves, or in trust for any other person or persons, as in such writing or will shall be directed concerning the same, and the other of the said parties shall, at the request and costs of such person or persons, sign, seal, and execute all such acts and deeds as shall be requisite or proper for the purpose of substituting and confirming him or them in the place of the party so dying, and of assigning and assuring to him or them the said part or share of the party deceased, of and in the said copartnership estate, in as beneficial a manner (but upon and according to the terms and directions of any such will or writing) as the party so dying would have been entitled to the same, if living; so that the person or persons so to be appointed as aforesaid do also, at his or their own proper expense, sign, seal, and execute all such acts and deeds as shall be requisite or proper to subject him or them to the same, or the like debts, demands, and other conditions, covenants, and agreements, as the party so dying would, if living, have been subject or liable to, under or in pursuance of these presents; and then and in such case, the name or names of the person or persons who shall be so appointed shall, if he or they require the same, be added to the stile of the copartnership firm, and the surviving

If either party die, his executors or nominees to be at liberty to succeed to the copartnership.

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NERSHIP.**

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between Traders.
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But such exe-
cutors, &c. not
to interfere in
the trade.

If executors of
deceased co-
partner refuse
to become
partner, co-
partnership to
cease.

party, his executors, administrators, and assigns, shall have and receive, during the residue of the term of the said copartnership, the yearly sum of £ , out of the share of the deceased party therein, for his or their trouble in conducting the said business solely and alone (1). **PRO-VIDED ALWAYS** nevertheless, that such person or persons shall not have authority or be at liberty to enter into, or make any contract or agreement, for the sale or purchase of any goods, wares, or merchandises, on account of the said joint trade, without the consent of the other partner first had and obtained, either in writing or by parol in the presence of one or more witness or witnesses; and if the person or persons so succeeding to any party so dying shall make or enter into any such contract, without such consent as aforesaid, then, and in every such case, the other party shall have a free choice or option either to assent to, or reject any contract so made; and if he reject the same, the goods, wares, or merchandises, if purchased, shall be for the separate use and account only of the person or persons who shall have bought or contracted for the same, without the consent of the other partner, as aforesaid, and if sold, then the same shall be placed and debited solely to his or their account in the copartnership books, and the amount thereof deducted from his share in the profits thereof, if the same shall be sufficient for that purpose, and if not, then be paid for by him out of his own private estate. **PROVIDED ALWAYS**, that if such executors or administrators, or nominee or nominees of the party so dying, shall refuse or decline to become partner or partners in the said joint trade, or shall afterwards depart this life before the expiration of the said term of years, then and in either of such cases, the share of such deceased party, his executors, administrators, or appointees, of and in the said joint stock and trade,

(1) A surviving copartner will not be allowed any compensation for his trouble in carrying on the business for the benefit of the representatives of a deceased party as well as of himself, unless it be otherwise previously stipulated by the articles; see *Burden v. Burden*, 1 Ves. and Bea. 170.

shall thereupon, as to profit and loss, cease and determine; and his or their share or shares shall, as to so much thereof as shall not break in upon the said capital stock of £ , or effects to that amount, be paid to the executors or administrators of the party deceased, within calendar months next after such cesser or determination of his or their share or shares therein. AND that the share or shares of the said deceased party, his executors, administrators, or appointees, of and in the said partnership stock, which shall, as to profit and loss, so cease as aforesaid, or so much thereof as shall not have been already received, shall be valued and taken according to the last annual rest, made in the accounts of the said copartnership, and paid in the manner following, that is to say," &c. *as above, (ante, p. 60, margin *)*.

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Sometimes it is agreed that the executors or administrators of a deceased partner shall become copartners for a limited time, to enable them the better to ascertain and wind up the affairs of their testator or intestate, in which case say,

" PROVIDED ALWAYS nevertheless, and it is hereby covenanted and agreed, by and between the said parties to these presents, that in case of the decease of either of them before the expiration of the said term of seven years hereinbefore limited for the duration of the said copartnership, the executors or administrators of the party so dying shall and may, during the term of one year, to be computed from the day of the decease of the party so dying, have, hold, possess, and enjoy, in copartnership with the party so surviving, all and every the part, share, right, and interest, which the party deceased had and enjoyed whilst living, of and in the said joint stock and trade, and the profits, gains, and produce thereof, and of and in all and singular the monies, goods, chattels, credits, wares, commodities, articles of merchandise, and other matters and things whatsoever, which at the time of such decease shall be in or belonging to, and together with such surviving party, and direct and carry on the same, and all matters, things, and concerns, incident or belonging to the said joint trade, in as full, absolute, ample, and beneficial a manner, to all intents and

Either party dying before the end of the term, his executors shall become copartners for one year.

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If either party
die during the
term, his widow
to be paid an
annuity.

purposes, as his testator or intestate might or could, by virtue of these presents or otherwise, have done, or have held, possessed, or enjoyed the same if living. AND at the end and expiration of such term of one year after the decease of the party so dying as aforesaid, all accounts and matters shall be finally balanced, settled, and adjusted, in like manner and form as is hereinbefore expressed and provided in that behalf, at the expiration or other sooner determination of the said term of years and as if such term were actually complete and ended by elapse of time."

If it be agreed that the widow of the party dying shall have an annuity paid to her for life, say,

"THAT in case the party dying before the expiration of the said term of years shall leave a widow, or a child or children him surviving, then the party surviving shall and will, during the life or lives of such widow, child, or children, and the life of the survivor of them, or during the remainder which shall be then to come of the said term of years, which ever shall first determine, well and truly pay, or cause to be paid, unto the said widow, child, or children, the yearly sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency, by four equal quarterly payments, in such shares and proportions respectively, or to such one of them only, or such other person or persons for her, his, or their use, as the party so dying shall, by his last will and testament, have directed or appointed in that behalf; and in case the said party so dying shall have made no such direction or appointment, then the whole of such yearly sum shall be paid unto the widow of the said deceased party, and the said surviving party shall give his bond in a proper form for payment thereof."

COPART-
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(B.) See *ante*, p. 65. If it be agreed that on the determination of the copartnership the stock shall be divided between the parties, say,

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(Full Form.)*

“ THAT on the determination of the said copartnership by lapse of time, or by notice given by either of the said parties, or by the award of arbitrators or an umpire, or otherwise howsoever, except only by death or illness, a general account in writing shall be taken of all the stock, debts, and effects of or belonging to the said joint trade, or to the said parties on account thereof, and also all debts owing by the said parties to any person or persons on account or in respect thereof; and after payment of all sums which shall have been advanced unto, or left in, the said joint trade by either of them, beyond his portion of the capital thereof, and also all other debts which shall be owing from or by the said joint trade, the residue of the said estate and effects (except such bad or doubtful debts as hereinafter mentioned) shall be parted and divided between the said parties, according and in proportion to their estates and interests therein. AND in case the said (*first named party*) alone shall be desirous, and in default thereof, in case the said (*second party*) shall desire to continue the said trade, then as to and respecting any lease or leases then subsisting of the premises where the said trade shall be carried on, and the stock in trade, utensils, and other things belonging to the said copartnership, the same shall be valued and appraised by the said parties themselves in such manner as they shall then agree, or if they cannot agree, then by three persons to be nominated as hereinafter mentioned, and the same shall be taken at such valuation by the party who shall intend to carry on or commence the said trade on his own separate account; but in case both the said parties shall determine to carry on the said trade in future on their respective separate accounts, then the lease or leases of the said premises shall be put up to sale by auction in the presence only of them the

On the determination of the partnership, (except by death) a partition of stock, &c. to be made.

If either party continue the trade, leases, &c. to be taken by the best bidder, &c.

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And stock at a
valuation.

If neither party
continue the
trade, stock, &c.
to be sold by
auction.

Outstanding
debts to be
divided.

said parties, and a person employed by them to take their respective biddings, and such of the said parties as at such sale shall be the highest bidder for the said premises shall be the purchaser thereof; and in such case, the stock in trade, utensils, and things belonging to the said copartnership, shall be taken and paid for by him at such price or sum as shall be set thereon by three appraisers, to be nominated as hereinafter mentioned; and in either of the said cases the party who shall have and take the said premises and stock in trade, shall give to the other of them such sufficient security for the amount of his share of the said price, and to be paid at such times, and with such interest, as hereinbefore is provided for the payment of the share of any of the said parties departing this life during the said copartnership; but in case neither of the said parties shall choose to carry on the said trade any longer, then the whole of the said premises, stock, utensils, and effects shall be sold by public auction, unless the said parties shall otherwise agree, and after payment of all debts due from the said parties, on account of the said joint trade, the clear residue of the produce thereof shall be equally divided between them, or their respective representatives, according and in proportion to their shares and interests respectively therein; and each of them the said parties shall, upon such partition and division, at the costs and expenses of the other of them, assign and assure to each other, their respective executors, administrators, and assigns, their several parts or shares of all the copartnership estate, property, and effects, of which any assignment or other assurance shall be requisite for that purpose. AND as to and respecting outstanding debts due to the said joint trade, the said parties shall and will, during the space of years, to be computed from the time of making up and perfecting such final account, use their best means and endeavours, without any recompense or allowance for their care or trouble, to receive and collect such outstanding debts, and shall and will, upon the last day of every month, (if the same shall not happen to be on a Sunday) and if so, then on the day before, duly and faithfully account and pay to

each other his and their share and shares of monies which shall from time to time be so collected; and in case any of the said debts shall, at the end of the said term of years, remain outstanding and unreceived, then that they the said parties shall, with all convenient speed, put the said debts under three heads, that is to say, good, dubious, and desperate debts, and allot unto each other a just and fair proportion of the said three sorts of debts, in order that the same may be equally and fairly divided amongst them, according to their several and respective interests in the said copartnership concern; and for facilitating such division and distribution of the copartnership property, as well that part thereof which shall have been gotten in, as that part thereof which shall be outstanding, it is hereby agreed that the same shall be made by disinterested persons experienced in the said trade, one whereof to be nominated by each of the said parties, his executors or administrators, with power for the persons so to be nominated at any time to choose an umpire or third person to decide between or assist them, which said several persons, or the majority of them, or their umpire, shall have full power to allot unto either of the said parties, his executors or administrators, as and for the part, or as the whole of his or their share, the entirety of and in any leasehold or other copartnership property, which from its nature may not be divisible without being converted into money. AND further, that upon such division being made, the said parties shall and will, at the request and expense of the party requiring the same, assign unto each other respectively, and their respective executors, administrators, and assigns, the share and shares of the property so to be allotted as last mentioned; and shall and will join in and execute all such powers as shall be necessary to enable each other to sue for or otherwise act concerning the property so to be assigned, in such manner as the party taking such assignment shall think proper, the party assigning being effectually indemnified by the other of the said parties from all subsequent expense and responsibility in respect thereof."

COPART-
NERSHIP.

*Deed of
Copartnership
between Traders.
(Full Form.)*

**COPART-
NERSHIP.**

*Deed of
Copartnership
between Traders.
(Concise Form.)*

No. IV.

*A Deed of Copartnership between two Persons, as
wholesale or retail Traders. (Concise Form).*

*Variations as in the preceding Precedent, and as in the
Margins below (1).*

THIS INDENTURE, of parts, made the
day of , in the year of our Lord .
BETWEEN (*one copartner*) of, &c. of the one
part (2), and (*other copartner*) of, &c. of the
other part. **WHEREAS** (3) the said (*copartners*) in
order to extend their connexions in business, have
agreed to become copartners in the trade [pro-
fession] or business of , for the period and
upon the terms and conditions hereinafter ex-

Recital of
agreement for
copartnership.

(1) See also notes, &c. to the correspondent parts of No. III.
p. 13, *et seq.* and clauses, &c. to the subsequent precedents in
margins.

Several parties.

(2) If there be several persons entering into copartnership,
each of them may be made as of a separate part.

Previous agree-
ment.

(3) If the deed be entered into in consequence of a previous
agreement in writing, such agreement may be here recited,
as *ante*, No. III. p. 14, n. (2); but it is not material.

New partner
admitted into
original firm.

If the deed be executed upon a new partner being admitted
into an original firm, see *ibid.*

pressed. AND for the better carrying on the said trade, have agreed to bring into the same the sum or value of £ , for their capital or joint stock, in the proportions following, that is to say, the said (*one copartner*) the sum of £ , and the said (*other copartner*) the sum of £ , and they have accordingly this day respectively paid into the house of Messrs. and Co. London, bankers, the sum of £ , part of the said respective sums, to their joint account, and have secured to the satisfaction of each other the payment of the residue thereof, on the day of next ensuing the date hereof (1). NOW THIS INDENTURE WITNESSETH, that in pursuance of the agreements aforesaid, each of them the said (*copartners*) for himself, his heirs, executors, and administrators, DOTH hereby covenant, declare, and agree with and to the other of them (2), his executors and administrators, that they the said (*copartners*) respectively will be and continue copartners together in the said trade or business of , for the term of years, to be computed from the date hereof, if they shall so long live, under and subject to the provisos, conditions, declarations, and agreements herein-

COPART-
NERSHIP.

*Deed of
Copartnership
between Traders,
(Concise Form.)*

Capital.

WITNESS,
that the parties
become copart-
ners.

(1) See other modes of advancing the capital, *ante*, p. 20, Capital. and *ib.* n. (2), p. 22, n. (2), p. 25, n. (1), and *post*, pp. 110. 124.

(2) If there be three or more copartners, say,

Several parties.

“ With and to the other and others of them, and their and each of their respective executors and administrators.” And see *ante*, p. 18, n. (1).

**COPART-
NERSHIP.**

*Deed of
Copartnership
between Traders.
(Concise Form.)*

How and where
the trade to be
carried on.

Premises to
be part of the
capital.

The capital to
be employed
solely in the
trade.

If either party
lend money, the
trade to be
chargeable.

Several
copartners.

One party to
reside in the
house.

after contained, (that is to say) **THAT** the said trade or business shall be carried on in the joint names of the said parties, and for their mutual benefit, and at their mutual risk and expense, in the proportions hereinbefore mentioned, under the style or firm of .

THAT the said business shall be carried on at , until the said parties (1) shall otherwise determine. **AND** that the premises where the said business shall for the time being be carried on shall be deemed a part of the capital stock, and be reckoned as personal estate (2).

THAT the capital stock shall at all times be employed solely for the purposes of the joint trade; but each of the said parties shall have a sole estate in the capital by him brought in.

THAT if either of the parties shall lend to the said joint trade any money beyond his capital therein, the capital stock and profits thereof shall be chargeable therewith to the party lending the same, together with interest after the rate of £5 per cent. per annum, but shall be withdrawn on calendar months notice in writing given by either to the other of them for that purpose, but shall not in the mean time be considered as part of the capital of the party lending the same.

(1) If there be three or more copartners, say,

“ Or the major part of them shall,” &c.

(2) And see *post*, p. 109. If one of the parties is to reside in the house, &c. see *ante*, No. III. p. 38, n. (1); and see also *post*, No. V. p. 112.

THAT the rents, taxes, repairs, and insurances, with all other necessary charges and expenses attendant upon the copartnership concerns; and also all casual losses which shall happen thereto, shall be borne by each of the parties in proportion to his share in the capital stock, unless any such loss shall happen through the wilful neglect or default of either of the parties singly, or of his own proper servants or apprentices, or such as shall have been taken by him without the consent of the other, in which case the same shall be borne and sustained by such party only.

COPART-
NERSHIP.

*Deed of
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between Traders.
(Concise Form.)*

Expenses, &c.
to be borne
equally.

THAT the stock in trade and the premises where the business shall for the time being be carried on shall be insured in the full value thereof, at the expense of the joint trade (1).

Insurance.

THAT the nett proceeds of the said joint trade, after deducting such costs, charges, and expenses as hereinbefore are mentioned, shall belong to each of the parties, according to the amount of his capital.

Nett profits to
be divided.

THAT no clerk, shopman, servant, or apprentice, shall be taken or discharged by either of the parties without the consent of the other (2).

Clerks, &c. to
be taken by
mutual consent.

THAT all premiums to be received with apprentices shall be added to the joint stock for the common benefit of the parties, and the ex-

Premiums to be
added to the
joint stock.

(1) And see *post*, p. 129.

(2) See also *post*, p. 105. If servants, &c. are to be hired by one party only, see *ante*, No. III. p. 38, note. Servants.

**COPART-
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*Deed of
Copartnership
between Traders.
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Contracts, &c.
to be made
in the joint
names of the
parties.

Entries to be
made of all
copartnership
transactions.

Books of ac-
count, &c. to
be open for
inspection.

Apprentices.

One party to
keep the cash,
&c.

Merchants.

penses of keeping such apprentices be borne by them in like proportions (1).

THAT all contracts and engagements, entered into by the parties, or either of them, on account of the joint trade, and all checks or drafts upon bankers, and others, bills of exchange, promissory notes, and other securities, bills of parcels, receipts for money, and other evidences whatsoever relative thereto, shall be made, given, and taken respectively in their joint names, or as they shall jointly appoint.

THAT entries shall be daily made in proper books to be provided for that purpose (2), of all monies which shall be received and paid, and of all goods, which shall be purchased or sold, and of or to whom, on account of the joint trade, with the prices thereof; and also of all such other transactions, matters, and things whatsoever, as shall be necessary to manifest at all times the true state of the said joint trade.

THAT all books, letters, securities, evidences, and writings whatsoever concerning the joint trade, shall be kept at the counting-house thereof,

(1) See other agreements as to the taking apprentices, *ante*, No. III. p. 30, in notes, and *post*, p. 115.

(2) If it be agreed that one of the copartners shall have the management of the ready money, &c. received on account of the copartnership, see *ib.* p. 32, n. (1), and p. 35, notes, and *post*, p. 127.

If the parties act as foreign merchants, see *ante*, No. III. p. 33, in notes.

and be open to the inspection of the said parties, and their respective representatives, who shall, at all seasonable times, be at liberty to peruse and take copies of the same.

**COPART-
NERSHIP.**

*Deed of
Copartnership
between Traders.
(Concise Form.)*

THAT on the day of , and the
 day of in every year, or one
calendar month next thereafter, a general account
in writing shall be made of the stock and effects
of the copartnership, and a balance be struck
concerning the same, in order to ascertain the
true state thereof, which account shall be fairly
entered in proper books for that purpose, and a
summary or balance sheet thereof be retained by
each party. AND upon the said accounts being
approved and signed by the parties respectively,
the same shall be conclusive upon all persons in-
terested therein, and not be again investigated,
unless some error to the amount of £ shall
be discovered within the space of calendar
months thereafter, and then so far only as may be
necessary for rectifying such error.

Half-yearly
rests to be made
and signed by
the parties.

Accounts, when
signed, to be
conclusive.

THAT upon each settlement of the said half-
yearly accounts, the clear profits of the joint trade
shall be divided between the parties in the pro-
portions aforesaid, and be paid to them respect-
ively, or passed to their respective separate ac-
counts in the books of the copartnership.

Half-yearly
division of
profits.

AND the said parties respectively further
agree, that they will at all times during the said
copartnership jointly and severally employ them-
selves diligently and with fidelity to each other

Parties to
employ them-
selves wholly in
the business.

**COPART-
NERSHIP.**

*Deed of
Copartnership
between Traders.
(Concise Form.)*

Will not be
concerned in
any other trade.

Neither party
to apply the
copartnership
monies to his
own use.

Except allow-
ance for sub-
sistence.

Surplus monies
to be paid in to
bankers.

Joint estate not
to be charged
with his private
debts.

in the affairs of the said joint trade (1), and use their best endeavours to promote the prosperity thereof.

THAT neither of the said parties shall nor will carry on or be concerned in any other trade whatsoever, without the consent in writing of the other.

THAT neither of the said parties will, without the consent in writing of the other of them, take or employ any of the money or effects of the copartnership, or engage the credit thereof in or for any other purpose than the said joint trade, and in the usual course of carrying on the same, save only the sum of per week out of the current receipts, by way of subsistence-money, and from time to time debiting himself therewith in the cash book of the copartnership (2).

THAT all monies received by either party on account of the joint trade, beyond what may be sufficient for current expenses and subsistence-money aforesaid, shall be paid into the hands of some banker to be agreed upon by the parties.

THAT neither of the said parties shall nor will suffer the copartnership estate to be attached,

One party only
to attend.

(1) If either party is to be excused from a personal attendance upon the business, see *ante*, No. III. p. 37, n. (1), and *post*, p. 112.

Merchants.

If the parties deal in foreign merchandise, and one is to reside abroad, see *ante*, No. III. p. 40, n. (1).

Expenses on
customers.

(2) If both or either of the parties are to have an allowance for the expense of customers, see *ante*, No. III. p. 42, n. (1).

charged, or incumbered with, or on account of, his private debts or engagements.

COPART-
NERSHIP.

THAT neither of the parties shall purchase or sell any goods or merchandise which he shall have received a notice in writing from the other of them, not to purchase or sell; nor purchase any goods or merchandise on account of the said joint trade, exceeding the value of £ in any one week, without the consent of the other of them.

*Deed of
Copartnership
between Traders.
(Concise Form.)*

Neither party
to buy, &c.
beyond a cer-
tain amount.

THAT in case either party shall purchase or sell contrary to the provision last aforesaid, the other shall be at liberty to dissent from the same at any time within the space of three days next after having notice thereof, and in case of such dissent, such purchase or sale shall be considered as made on the proper and private account of the party making the same (1).

If either party
purchase, &c.
without consent,
same to be on
his own account.

THAT neither of the parties will, without the consent in writing of the other of them, accept or indorse any bill of exchange, promissory note, or other security for or in the name of the said copartnership, unless for value actually received or to be received to the full amount thereof, and in the usual course of dealing.

Neither party
to accept bills,
but in the
regular course
of trade.

THAT neither of the said parties shall, without such consent as last mentioned, lend any money, property, or effects of the joint trade, nor discount any bill or note with the copartnership money.

Nor to lend nor
discount, &c.

THAT neither of the said parties will trust or

Nor trust.

(1) If the parties are to be prohibited from making journeys, see *ante*, No. III. p. 45, n. (1). Journeys.

**COPART-
NERSHIP.**

*Deed of
Copartnership
between Traders.
(Concise Form.)*

Nor compound
nor release
debts, &c.

Each party to
sustain losses
occasioned by
him.

Nor become
bail, &c.

Neither party
to assign his
share without
consent.

Parties to have
the refusal of
each other's
share.

give credit for any goods or merchandise, to any person whom the other of them has, in writing, forewarned not to credit or trust.

THAT neither of the said parties will compound or release any debt due to the said joint trade, nor deliver up any security belonging thereto, without receiving the full amount or value thereof, nor sign any letter of licence, nor the certificate of any bankrupt, nor do any act or thing whereby any money or effects of the said copartnership may be lost or diminished, except only in cases of necessity or emergency.

THAT each of the parties shall answer and pay to the capital stock the full amount or value of all debts, effects, or securities for which he shall, without such consent as aforesaid, compound, release, or discharge, or be the means of being lost or diminished.

THAT neither of the said parties will, without such consent as aforesaid, become bail or surety for any person whomsoever beyond the amount of £ ; nor will subscribe any policy of insurance, as an insurer, nor speculate in the public funds, or in any public loan or lottery, nor enter into any other speculative concern whereby his capital stock or his private estate may be lost or put in jeopardy.

THAT neither of the parties shall sell, assign, or otherwise dispose of (1), (except as hereafter men-

(1) If either party is to have the refusal of the share the other may desire to dispose of, see *ante*, No. III. p. 50, n. (1).

tioned) his share in the said joint trade, or any interest therein, without the consent in writing of the other of them (1).

**COPART-
NERSHIP**

*Deed of
Copartnership
between Traders.
(Concise Form.)*

If either party
act contrary to
the articles, the
copartnership
voidable.

AND it is hereby further agreed and declared, that in case either of the said parties shall wilfully do or omit any matter or thing whatsoever, contrary to the stipulations and agreements herein contained, or either of them, or any other matter or thing whereby the said joint trade shall be in any respect prejudiced, or shall become bankrupt as to his private estate, or shall refuse to submit differences to reference, it shall be lawful for the other of them, at any time within the space of twenty-one days next after the same shall come to his knowledge, to give to the party so acting, notice in writing, by affixing the same in any conspicuous part of the counting-house of the said joint trade, or otherwise, announcing a dissolution of the said partnership, and immediately thereafter or at such other future time as in the said notice shall be named, the said copartnership shall wholly determine, in like manner as if such party were then dead, or the whole of the said term of years had expired, (but without prejudice to right of action which the said parties, or either of them, would otherwise have had) and the party giving such notice shall be at full liberty forthwith (unless the party to whom the

If either party be at liberty to introduce a son, &c. into the business, see *ante*, No. III. p. 50, notes.

Either party to
introduce a son,
&c.

(1) If either party is to be at liberty to retire, see *ante*, No. III. p. 51, n. (1), and p. 140.

One party may
retire.

**COPART-
NERSHIP.**

*Deed of
Copartnership
between Traders.
(Concise Form.)*

If either party
die, the other
to take the
stock.

Amount to be
paid by three
instalments.
✱

same shall be given, require the matter to be referred to arbitration) to advertise the same in the London Gazette, and any other public paper or papers, or otherwise howsoever; and the party to whom such notice shall be given, is hereby prohibited from setting up or carrying on the said trade of within miles of, &c. for the space of years next thereafter (1).

AND it is hereby agreed, that if either of the said parties shall depart this life before the expiration of the said term of years (2), the survivor of them shall take the share (3) of the party so dying in the said joint stock, at the value thereof according to the last half-yearly account, if any, which shall have been taken of the same, and if no such account shall have been taken, then and also as to such effects as shall have since accrued, at a fair valuation to be made by three indifferent persons, one to be chosen by the surviving party, one other by the executors or administrators of the party deceased, and the third by such two first nominees, and the amount thereof be paid in the manner following, (that is to say) one-third part thereof (*or as agreed*), with interest upon the whole, after the rate of £5 per cent. per annum, at the end of six calendar months; one

Dissolution on
notice.

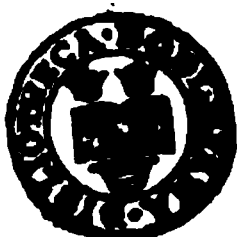
Return of
capital.

Terms on death.

(1) Where liberty is given to either party to dissolve the copartnership on notice, see No. III. p. 57, n. (1), and p. 140.

(2) If either party dying within a given period is to have a return of capital, see *ante*, No. III. p. 58.

(3) See other agreements on determination by death, *ante*, No. III. p. 59, and 83, rider (A), and p. 137.



other third part thereof, with interest after the rate aforesaid, upon the remaining two-third parts thereof, at the end of twelve calendar months; and the remaining third part thereof, with interest after the rate aforesaid, at the end of eighteen calendar months next after the decease of the party so dying; AND for the better securing the said payments, the surviving party shall, within one calendar month next after the decease of the party so dying, execute to his executors or administrators, a bond in double penalty, with one or more sufficient surety or sureties for the amount thereof; AND also a like bond for indemnifying such executors or administrators from all debts and demands from or upon the said joint trade; UPON the delivery of which said bonds, the executors or administrators of the party dying, shall, at their own expense, convey and assure his share of the said stock unto the surviving party, his executors, administrators, or appointees; except only as to bad debts, which shall be divided between the surviving party, and the executors or administrators of the party deceased, according to their respective interests in the same.

THAT at the expiration of the said term of years, if the said (*first named party, or as otherwise agreed*) shall be desirous to continue the said trade, he shall be at liberty to take the share (1)

COPART-
NERSHIP.

*Deed of
Copartnership
between Traders.
(Concise Form.)*

And to be
secured by
bond, &c.

On bonds being
given, the re-
presentatives of
deceased party
to assign to
survivor.

At the expira-
tion of the term,
one of the par-
ties to have re-
fusal of the
stock, &c. at
valuation.

(1) If the parties agree to cast lots for the stock in trade, see No. III. p. 66, n. (1).

Division by
lots.

If the premises where the business is carried on, is to remain to an original partner, see *ib.* p. 67, note.

One party to
have the pre-
mises.

**COPART-
NERSHIP.**

*Deed of
Copartnership
between Traders.
(Concise Form.)*

On his refusal,
the other to
have option.

If both decline,
the stock to be
sold.

of the said (*second party*) in the said capital stock and effects, at the amount the same shall be valued at by three indifferent persons, one to be chosen by the said (*first party*), the other to be chosen by the said (*second party*), and the third by such two nominees, (making all just allowances for any balance due from the said (*second party*),) and which shall be paid in the manner following, (that is to say) one part thereof, with interest upon the whole, after the rate of £5 per cent. per annum, at the end of calendar months; one other part thereof, with interest after the rate aforesaid, upon the remaining parts thereof, at the end of twelve calendar months, &c. and the remaining part thereof, with interest after the rate aforesaid, at the end of calendar months next after the expiration of the said copartnership; and the party continuing the said trade shall give the like bond, security, and indemnity to the other of them, as is hereinbefore provided in the event of the decease of either of the said parties. AND in case the said (*first party*) shall decline to take the said copartnership stock upon the terms and conditions aforesaid, then the said (*second party*) shall be at liberty to take the same in and upon the same or like manner and terms in all respects; BUT in case both of the said parties shall decline to take the said stock and effects, then the same shall, upon the expiration of the said

Division of
stock.

If the stock is to be divided at the end of the copartnership, see *ante*, p. 87, rider (B), and pp. 116, 143.

term of years, be sold by public auction or by private contract, as shall be agreed by the said parties, and the money to be produced by such sale, and (after payment of all expenses attending the same) by debts owing to the said trade, when the same shall be from time to time collected, and amount to the sum of £ , shall be divided between the said parties according to their respective proportions in the said joint trade.

**COPART-
NERSHIP.**

*Deed of
Copartnership
between Traders.
(Concise Form.)*

THAT at the end or expiration of the said copartnership, by effluxion of time, notice thereof shall be given in the London Gazette, and also to the correspondents and customers of the said copartnership, by letter under the joint hands of the parties. AND any fresh or further credit given to any person on the copartnership account, after the determination thereof, shall be debited to the account of the party giving the same.

On determina-
tion of copart-
nership, notice
to be given to
customers.

Credit after-
wards given, to
be at the risk of
the party cre-
diting.

AND it is hereby further agreed and declared, that if at any time hereafter it shall be thought by either of the said parties, or by his counsel in the law, (being of the degree of a barrister) that these presents, or any of the stipulations herein contained, are in any respect defective for the purpose of carrying the mutual intentions of the parties into effect, the other of them shall and will, if thereunto required in writing under the hand of the party requiring the same, execute at the copartnership expense, (or at the expense of the party requiring the same, if the same be for his own satisfaction only) such further deed, or

Further assur-
ance.

**COPART-
NERSHIP.**

*Deed of
Copartnership
between Traders.
(Concise Form.)*

Disputes to be
referred to ar-
bitration.

other writing, as may be necessary or expedient for remedying such defect.

AND it is hereby further agreed, that if at any time during the said copartnership, or after the expiration thereof, and before a final settlement of the accounts shall be made, any dispute or question shall arise relative to the concerns of the said joint trade, or of these presents, or of any award to be made in pursuance hereof, or of the conduct or incapacity of either of the said parties, the same shall (1) within seven days next after request in writing shall be made by either to the other of them, (by affixing the same in any part of the counting-house, or otherwise) be referred to the arbitration of two indifferent persons, one to be named by each of the parties, and a third person or umpire to be by them at any time named, to assist or determine between them, and in default of either of the parties naming an arbitrator within fourteen days, the subject of difference may be referred by the other of the parties to the arbitration of two indifferent persons to be by him alone named, (of which immediate notice shall be given to the other of them) who may appoint such third person or umpire as aforesaid; AND in case such first referees cannot agree, and shall neglect to appoint an umpire for the space of one calendar month, he shall be appointed by the attorney or solicitor general

Nominees may
appoint an um-
pire.

In default,
attorney or
solicitor general
to appoint.

Several
copartners.

(1) If there be more than two copartners, see *ante*, No. III. p. 73, n. (1).

for the time being, on application of either of the parties for that purpose. AND in either of the said cases of reference, the award of the said arbitrators or umpire, or any two of them, shall be conclusive upon all persons interested therein, so that the same be made in writing under their or his hands and seals, or hand and seal, within one calendar month after reference to him or them.

**COPART-
NERSHIP.**

*Deed of
Copartnership
between Traders.
(Concise Form.)*

Award to be
final.

AND each of the said parties doth hereby agree to enter into a bond to the other of them, to obey the said award in all things; and that the submission shall be made a rule of either of his majesty's courts at Westminster. AND the said parties respectively will submit to be examined upon oath relative to the matters referred, and produce to the referees all accounts and papers in their respective custody or power, concerning the same.

Parties to give
bond to abide
the award.

Parties to be
examined on
oath.

AND further, that if any action, suit, or other proceeding, be commenced by either of the parties against the other of them, who shall have made such request for a reference as aforesaid, such request may be pleaded in bar, and shall be a bar to any such action, suit, or proceedings. AND (1) moreover, that in case no award shall be made by the arbitrators or umpire, within the time hereinbefore appointed for that purpose, the court in which any suit to be commenced by either of the said parties for that or other purpose, shall be

Request of
reference to be
a bar to action.

If no award
made, chancery
or exchequer to
make same.

(1) If there be more than two copartners, see *ante*, No. III. p. 79, n. (1).

Several
copartners.

**COPART-
NERSHIP.**

*Deed of
Copartnership
between Traders.
(Concise Form.)*

Expenses of
reference.

Nomine pœnæ.

depending, may exercise all the personal authorities of the said referees or their umpire; and the order of such court, whether judicial or extrajudicial, shall be binding upon all parties. AND it is hereby also agreed, that all reasonable expenses attending any such reference, arbitration, and award as aforesaid (including fees to counsel), shall be equally borne and paid by each of the parties, [*or if so agreed*, shall abide the event of the award to be made in pursuance thereof,] and shall be reckoned and allowed as between attorney and client. AND lastly, each of the parties hereto doth bind himself, his heirs, executors, and administrators, to the other of them, his executors, administrators, and assigns, in the penalty of £ for the true performance of all and every the clauses, covenants, and agreements, herein contained, which on his or their part is to be observed; but which said penalty, it is hereby agreed, shall not prejudice any right of action or suit which either of them might otherwise have had against the other of them or his representatives. IN WITNESS, &c.

Other variations.

. Other clauses to be added or substituted, may be seen by referring to the margins of the subsequent precedents.

COPART-
NERSHIP.

Brewers.

No. V.

*Indenture of Copartnership between Persons in the
Trade or Business of Common Brewers (1).**Variations as referred to below.*

THIS INDENTURE, made, &c. . BETWEEN
(one party) of, &c. , common brewer and
malster, of the one part, and (other party) of, &c.

, common brewer, of the other part. WHEREAS
the said (*parties*) are desirous and have agreed to
enter into articles for carrying on the said trade
or business of a common brewer in partnership
together, for the time, upon the terms and con-
ditions, and under and subject to the powers,
provisoes, and declarations, hereinafter con-
tained or expressed. NOW THEREFORE THIS IN-
DENTURE WITNESSETH, that in pursuance of the
said agreements and consideration of the premises
and of the mutual trust and confidence which
they the said parties have and repose in each
other, and for the purpose of augmenting their
respective capitals, and other good causes and
considerations, them thereunto moving, they the

Recital of agree-
ment to become
copartners.WITNESS, that
the parties be-
come copart-
ners.

(1) See the variations and notes to No. III. *ante*, p. 13, *et seq.*
in the margins.

COPART-
NERSHIP.

Brewers.

Term of years.

Firm of the
concern.Where to be
carried on.

said (*parties*) HAVE continually covenanted, declared, and agreed, and each of them for himself, his heirs, executors, and administrators, BOTH covenant, declare, and agree with and to the other of them, his executors and administrators, by these presents, THAT they the said (*parties*) shall and will be or become and continue partners together in the said trade or business of common brewers, and in all transactions, matters, and dealings relative thereto, for and during the term of years, to be computed from the day of now last past, and from thence fully to be complete and ended (unless sooner determined in pursuance of the provisoes or agreements hereinafter contained,) upon, under, and subject to the terms, conditions, declarations, and agreements following (that is to say) THAT the said joint trade or copartnership, and all buyings and sellings, transactions and dealings, relative thereto, shall be managed, exercised, and carried on in the name or firm of Messrs. , or otherwise, in the joint names of the said parties, and for their mutual benefit, and at their mutual risk and costs in the shares or proportions hereinafter mentioned. AND that the said copartnership trade shall be carried on (except in cases of accident by fire, or any other unavoidable accident, which shall render a removal necessary, and also when and after any damages by fire shall have been re-

Several parties.

If there be many parties, see *ante*, No. III. p. 18, n. (1).

paired, or the inconvenience or destruction arising from other accidents shall cease or have been removed) at, in, or upon the brewery or messuage, brewhouse, warehouses, storehouses, cooperage, granaries, yards, and premises, situated at aforesaid, wherein the said trade or business is now carried on, and at such other place or places as they the said parties shall from time to time mutually agree upon. AND also that the stock of the said trade or business consisting of the said brewery, messuage, brewhouse, warehouses, storehouses, granaries, and other offices and buildings, at aforesaid, and of the freehold, copyhold, and leasehold messuages, or public houses, grounds, and tenements thereto belonging, and the coppers, vats, batches, barrels, casks, waggons, carts, drays, pumps, implements, horses, swine, timber, buildings, and other materials, and also the said stock of beer, ale, malt, hops, coals, book debts, bonds, notes, and other the effects included in the lists and valuations or accounts made out and taken thereof respectively, and hereunder written, and all other the money and property now due, owing, or belonging to the said trade or business as aforesaid, and entered in the books of account opened for the carrying on of the said trade, and signed by both the said parties, as of the amount or value of £ , shall be considered and taken as the capital or joint stock of the said joint trade or business and copartnership; and the same and all increase, gains, and

COPART-
NERSHIP.

Brewers.

That brew-house, public-houses, &c. to be considered part of the capital stock.

**COPART-
NERSHIP.**

Brewers.

Shares of the
respective
parties.

Future pur-
chases of public-
houses to be
part of joint
stock.

Premises, &c.
to be insured.

profits thereof shall belong to them the said parties in the shares or proportions following, (that is to say) part thereof respectively (the whole into equal parts being considered as divided) to the said (*one party*) his executors and administrators, and the other or remaining part thereof to the said (*other party*) his executors and administrators; and that all such gains and profits of the said joint stock and trade, after payment or deduction of all losses, damages, charges, and expenses incident to or attending the carrying on the said joint trade, shall, during the continuance of this copartnership, belong to, and be shared and divided by and between them the said parties in the like shares or proportions. AND it is hereby also further declared and agreed by and between the said parties to these presents, that if any purchase or purchases shall at any time or times hereafter, during the continuance of this copartnership, be made of any freehold, copyhold, or leasehold public houses, such purchase or purchases shall be made by and for the benefit of the said copartnership, in the same proportions and shares as are hereinbefore expressed and declared of and concerning the said joint capital stock; but that no such purchase or purchases shall be made by either of the said partners without the consent of the other of them first had and obtained in writing under his hand. AND also that such parts of the capital stock and premises as for the time being shall be exposed or liable to damage by fire shall,

from time to time, during the said copartnership, be insured and kept insured at the expense of the said capital stock, or the profit and gains thereof, in some of the public offices of insurance in the cities of London or Westminster, and that the money which shall become due on any such insurance shall be deemed part of the said capital or joint stock, and shall be applied in replacing or supplying, repairing and reinstating the premises or articles consumed or damaged by fire, in respect of which such insurance money shall be received.

COPART-
NERSHIP.

Brewers.

AND also that all debts due or to become due from the said partners, on account of the said joint stock and trade, and all ground rents, taxes and repairs of the said breweries and premises, and of all warehouses, storehouses, vaults, and other buildings used in or belonging to the said joint trade, and the wages and salaries of all clerks, servants, draymen, workmen, and labourers who from time to time shall be retained and employed in and about the joint trade or concern, and all other outgoings or disbursements on account thereof, as well as all losses and damages which may arise or be occasioned thereto, shall be paid, borne, sustained, and discharged by and out of the said capital or joint stock of the said trade, and the gains and profits thereof, or otherwise, by and between the said partners, their respective executors or administrators, in proportion to their respective shares of and in the said joint stock and trade, and the gains and profits thereof.

Losses and ex-
penses to be
borne by each
party according
to his share.

**COPART-
NERSHIP.**

Brewers.

All transactions
to be in the
joint names of
the parties.

AND that all contracts and engagements to be entered into by, or to or with the said parties, on account of the said copartnership or joint trade, and all checks and drafts to be drawn by them for or on account of the said copartnership or joint trade, and all bills for goods to be delivered, and receipts for money to be paid on account of the said copartnership or joint trade, shall be in the joint names of them the said parties. AND also that all purchases or leases of public houses and other premises; and all permanent securities, such as bonds and mortgages, which shall hereafter be taken on account of any debt or debts, sum or sums of money, due and owing or to be due and owing to the said parties in respect of the said copartnership trade, shall from time to time be made and taken in the names of them the said parties, or as they shall jointly appoint.

One party to be
sole manager of
brewery.

AND also that the said (*second party*) shall (1), according to the best of his skill and abilities, attend to, manage, and carry on the trade and business of brewing, and other the concerns of the said copartnership, and shall and will employ himself wholly in the affairs and management thereof, and shall not nor will, during the said copartnership, either directly or indirectly engage or be concerned in any other trade or business whatsoever. AND that in consideration

Managing part-
ner to live in
the house.

Both parties to
act.

(1) If both parties are equally to attend to the concern, see *ante*, No. III. p. 39.

thereof, he the said (*second party*) shall have the use or occupation for himself and family of the messuage or dwelling-house, with the appurtenants adjoining and belonging to the said brewery, as the same is or are now occupied by him as long as he shall continue the conducting or managing partner of the said brewery, and that during all such time he shall be allowed sufficient quantities of beer and coals for the use and consumption of himself and family, within the gates or boundary of the said dwelling-house and brewery; and that no rent or other sum, in the nature of rent or taxes, or otherwise howsoever, shall be paid or payable by him the said (*second party*) individually, and merely as occupier, in respect of the said dwelling-house and premises so occupied by him as aforesaid, or for or on account of the firing or beer used and consumed at the same dwelling-house by him and his family, but that he the said (*second party*) shall have the sole use and occupation of the said dwelling and appurtenances for himself, family, and apprentices; and also such firing and beer as may be consumed therein by, and out, or at, the expense of the said partnership stock and trade.] [AND also that the said (*first party*) shall not be under any obligation to attend to or act in the management or conduct of the said brewery, any further or otherwise as he shall think fit, and other than and except that he the said (*first party*) shall and will, either alone or in conjunction with the said (*second party*) purchase or cause to be pur-

COPART-
NERSHIP.

Brewers.

The other party
to be excused
attendance.

COPART-
NERSHIP.

Brewers.

One party may
continue to
follow other
business.

Either party to
be at liberty to
take a son ap-
prentice.

No other ap-
prentices to be
taken without
consent.

chased and supplied all such barley, malt, hops, coals, horses, carts, or any other articles which may be required, for or on account of the said copartnership concern. AND that he the said (*first party*) shall not be restrained, hindered, or debarred, from prosecuting or carrying on his present trade or business of a maltster, or of pursuing, or prosecuting, and carrying on any other trade, business, or employment, which he shall or may wish to enter into and be engaged in, either on his own account, or in copartnership or conjunction with any other person or persons whomsoever, save only as a common brewer.] AND also that each or either of the said parties shall be allowed at any time during this partnership, to have or take, without any premium or consideration, one of his sons as an apprentice to them the said copartners or either of them to be taught and instructed in the said joint trade or business in all its branches by the said (*second party*), and that after the death or unfitness of any such son of either of the said parties, then that such partner shall be at liberty to take or bind any other of his sons an apprentice to the said joint trade, to be instructed therein by him the said (*same party*), and so as often as any such son shall die, decline, or become unfit for the said business, and that he the said (*same party*) shall be allowed out of the said partnership or joint trade a reasonable allowance or compensation for the board and lodging of every such apprentice. BUT that every other apprentice or apprentices

which may be taken by either of the said parties to the said joint trade shall be so taken by the joint mutual consent of both of them, and not otherwise, and that every apprentice, when taken, shall be employed in the said joint trade. AND that all and every sum and sums of money which may be paid or advanced as a premium with any such apprentice or apprentices shall be paid into the joint stock of the said copartnership and placed to the credit thereof for the mutual benefit of the said parties in the proportions aforesaid. AND that the party who shall find or provide any such apprentice or apprentices with board and lodging shall be allowed out of the said joint stock and trade a reasonable compensation for the board, lodging, and maintenance of every such apprentice. AND that he the said (*second party*) shall and will teach and instruct every such apprentice so to be taken, in the true art and mystery of the said joint trade or business of a common brewer, and all branches thereof, and of all matters or things relative thereto, according to the best of his skill and abilities. AND, &c. (*Add usual clauses of fidelity to each other, &c. &c.*) (1). AND that if either of the said parties shall, during the continuance of this copartnership, knowingly and wilfully overlook any clandestine or illegal practices

COPART-
NERSHIP.

Brewers.

Premiums with
apprentices to
be joint pro-
perty.

Allowance for
board of ap-
prentices.

Managing part-
ner will instruct
apprentices.

Usual clauses.

Connivance at
improper con-
duct in servants,
&c.

(1) See *ante*, No. III. p. 39, *et seq.* and p. 96, *et seq.*

And if either party is to have liberty to quit on notice, see *ib.* p. 57, n. (1), p. 140.

If there be dormant partners, see *post*, No. VI. p. 121, *et seq.* in margins.

Usual clauses.

Liberty to quit.

Dormant part-
ners.

**COPART-
NERSHIP.****Brewers.**Dissolution not
to prejudice
rights of action.Provision in
case of death of
either party.At the end of
the partnership
one party to
take the stock,
&c.

Death of parties.

relative to the said joint trade, or the servants or others employed therein, which may tend to injure the said copartnership trade, or lessen or in any wise affect the capital stock or profits and gains thereof, and shall not immediately upon the discovery of any such clandestine or illegal practices give notice or information thereof to the other of them, then and from thenceforth the said partnership hereby established and entered into shall cease and be entirely at an end, as if the whole of the said term of years was fully ended and expired. BUT nevertheless such dissolution shall be without prejudice to the remedies which either of the said parties may or otherwise might have or be entitled against the other of them for the breach or nonperformance of any of the articles, covenants, clauses, and agreements herein contained, at any time or times before or after the giving, leaving, or affixing such notice as aforesaid. PROVIDED always, and it is hereby declared and agreed by and between the said parties, and each of them, for himself, his heirs, executors, and administrators, doth hereby covenant, grant, and agree to and with the other of them, his executors and administrators, that if the said (*second party*) shall die before the expiration of the partnership hereby established, THEN, &c. (1). PROVIDED also, and it is hereby further declared and agreed by and between the said parties to

(1) See various agreements in case of the death of either party before the expiration of the copartnership, *ante*, No. III. pp. 58, *et seq.* 83, rider (A), *ante*, pp. 85. 100, and *post*, 137. 154.

these presents, that at the expiration of the said partnership term of _____ years (1), if the said partnership or joint trade should be carried on to that period, it shall and may be lawful to and for the said (*second party*) his executors, administrators, or appointees, to accept and take all the part share or proportion of the said (*first party*) of and in the said brewhouse, public-houses, and estates belonging to the said copartnership trade, and also of the capital stock, monies, goods, debts, and effects whatsoever, which at the expiration of the said term shall belong to the said copartnership, or to the said parties on account thereof, as the same joint stock shall be ascertained or estimated and valued by two indifferent persons, one to be chosen by each of the said parties, his executors, administrators, or appointees; and in case such two persons cannot agree, then that the same shall be appointed and valued by such one indifferent person as the said first referees shall for that purpose nominate and appoint umpire in the premises, whose appraisement and valuation shall be final and conclusive, and the amount thereof paid accordingly, [first deducting thereout such money as the said (*second partner*) shall from and after the last yearly account have been received out of the said joint trade, for or in respect of his annual allowance as aforesaid, together with in-

COPART-
NERSHIP.

Brewhs.

Appraisement
of stock.

(1) See other provisions on the expiration of the copartnership, *ante*, No. III. p. 65, *et seq.* and notes there, also p. 100, *et seq.* and *post*, p. 142. Expiration of copartnership.

COPART-
NERSHIP.

Brewers.

How and when
amount to be
paid.Indemnity to
outgoing party.

terest for the same after the rate of £5 per cent. per annum, to be accounted from the time of the expiration of the said copartnership term until payment thereof,] the same payments to be made in manner following, (that is to say) one third part thereof at the end of the first calendar months next after the expiration of the said copartnership term; one other third part thereof at the end of months next after the expiration of the said copartnership term; and the remaining third part thereof at the end of calendar months next after the expiration of the said copartnership term, (*or as may be agreed*) and for the better securing the payment thereof, the said (*second party*) his executors, administrators, or appointees shall within one month after the expiration of the said copartnership term enter into and become bound unto the said (*first party*) his executors, administrators, and assigns, in one or more bond or bonds with double penalty, and with one or more such surety or sureties, as the said (*same party*) shall approve of, conditioned for payment of such monies, and at such time and place, and in such manner and form as aforesaid. AND the said (*second party*) shall also thereupon enter into and become bound to the said (*first party*) in one or more bond or bonds of sufficient penalty for saving harmless and indemnifying the said (*same party*) his heirs, executors, and administrators, and his and their lands and tenements, goods and chattels, of and from all debts which at the time of the expiration

of the said copartnership term were owing by the said copartners to any person or persons for any matter or thing touching or on account of the said joint trade, and of and from all actions, suits, damages, and expenses for or on account of the same debts, and every of them, which debts the said (*second party*) his executors, administrators, or appointees, shall pay and satisfy in due and convenient time. AND that the said (*first party*) shall and will, upon the sealing and executing such bonds as aforesaid, by such good and sufficient conveyances, release, surrenders, assignments, and other assurances in the law, as the counsel of the said (*second party*) his heirs, executors, administrators, or appointees, shall require and approve, at the request, costs, and charges in all things of the said (*same party*) his heirs, executors, administrators, or appointees, release, convey, surrender, assign, and otherwise assure all the part, proportion, share, right, title, interest, claim, and demand whatsoever of him the said (*first party*) of, in, to, or out of all and singular the messuages, lands, tenements, hereditaments, and brewhouses, plant, stock, debts, and effects, and the profits and gains thereof, which at the expiration of the said copartnership term were in joint trade or copartnership between them the said parties, or jointly owing or belonging unto them on account thereof, unto him the said (*second party*) his executors or administrators, or as he or they shall direct or appoint, except as to all such bad and desperate debts due or owing to

COPART-
NERSHIP.

Brewers.

Outgoing party
will assign stock,
&c. to continu-
ing partner.

As to bad debts.

COPART-
NERSHIP.

Brewers.

or on account of the said joint stock as shall not have been reckoned as a good estate, and cast up and included in the last yearly account made and stated by and between them the said parties as aforesaid ; and that such bad and desperate debts shall in such case, with all convenient speed, be divided and distributed between the said parties respectively, their respective executors, administrators, or assigns, according to their respective shares and proportions of and in the said capital stock, and thereupon the said parties respectively, their respective executors, administrators, or appointees, shall give unto each other their full power and authority to get in and recover his and their respective parts and shares of such bad and desperate debts. PROVIDED also, &c. &c. (*Add provision for general sale of the stock, &c. if both parties decline business, or otherwise, as agreed upon (1), and usual clause of arbitration, &c. (2).*). IN WITNESS, &c.

Division of
stock, &c.

(1) See *ante*, No. III. p. 66, *et seq.* and p. 87, rider (B) ; see also pp. 71. 142.

Arbitration.

(2) See *ante*, No. III. pp. 72. 103, and *post*, p. 148.

COPART-
NERSHIP.

*Manufacturers
and Dormant
Partners.*

No. VI.

Deed of Copartnership between Parties in a Manufacturing Concern, (one only of them being acquainted with the Business, and the others Dormant Shareholders (1)).

THIS INDENTURE of parts, made the
day of in the year of the reign, &c.

(1) On being instructed to frame a deed of copartnership between dormant and acting partners, one is generally required so to frame it as to protect the dormant partners from being answerable for the conduct of the others, or further than the amount of their respective shares in the capital; but this is absolutely impracticable, because one partner is by law answerable for the other, (that is to say) every partner is individually liable to the *public* for the conduct of all his copartners. And what are termed *dormant* partners are equally liable (when discovered) with acting partners: and this circumstance, it may be observed, is an objection to a *numerous association*. And it would be desirable if the intended partners could procure a sufficient *surety* to the others for indemnifying each other from the consequences of personal misconduct, or of breach of the articles of copartnership. Bonds conditioned for performance of them might be exchanged between the partners, and would be very proper; but it is obvious that such a measure might not cure or reach the mischief, because if the obligor should become *insolvent*, the protection to be afforded by his bond would at the same time fail; and

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

Recital of agree-
ment for copart-
nership.

Recital of agree-
ment for a lease
of premises.

and in the year of our Lord . BETWEEN
(*the acting copartner*) of, &c. manufacturer of
, of the first part, and (*the dormant co-
partners*) of, &c. of the other part. WHEREAS the
said (*acting copartner*) has long manufactured and
traded in , and the several branches of
business incident thereto, and hath lately dis-
covered a process for the manufacturing of ,
and other articles upon an improved
principle, but not having the means of bringing
to perfection or extending the same, without as-
sociating others in the concern, the several parties
hereto of the second part, in order to assist him
therein, and to augment their respective fortunes,
have agreed to become partners with him upon
the terms and conditions hereinafter mentioned.
AND WHEREAS the said (*acting copartner*) in con-
templation of the said intended joint undertaking
hath taken or agreed to take of in the
county of a lease in his own name of a
certain piece of ground at in the county
of aforesaid, for the purpose of erecting

where parties embark in a concern which few of them under-
stand, the danger must be considerably increased. At any rate,
before either party pay his share of the capital, it will be pru-
dent that he should gain every requisite information as to the
general eligibility of the scheme; and that the acting and
efficient partner is in possession of ample skill and integrity to
promote the interests of the other partners as well as his own;
and that the other contributors *are ready with their money.*

and building a manufactory thereon, and which lease he is to be considered as holding as trustee for himself and other the said copartners. Now THIS INDENTURE WITNESSETH that for establishing the said recited agreement and in consideration of the mutual trust and confidence which the several parties hereto have and repose in each other, they the said parties and every of them for himself and his own executors and administrators doth hereby covenant, promise, grant, and agree to and with the others and other of them reciprocally by these presents, in the manner following (that is to say) that on the day of now next ensuing they the said parties shall and will become and be copartners, and be concerned together in the trade and business of manufacturing and vending and such other similar articles as they the said parties, or the major part of them, shall or may hereafter agree upon in the name of the said (*acting copartner*), and in no other name, firm, or style whatever, for and during and unto the full end and term of years to be thenceforth next ensuing, under and according to the conditions, provisos, and terms of agreement hereinafter contained or expressed. AND for providing a competent fund for the purpose of erecting and building the said manufactory and purchasing the necessary utensils and articles, and for the effectually carrying on the said joint trade, concern, or business, they the said copartners have agreed to bring in together and to make up a capital of £ of lawful money of Eng-

COPART-
NERSHIP.

*Manufacturers
and Dormant
Partners.*

WITNESS,
parties covenant
to become co-
partners.

Capital to be
brought in
by dormant
partners.

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

One party to
give experience,
&c. instead of
capital.

land; in the proportions following (that is to say) the said the sum of £ , the said the sum of £ , the said the sum of £ , the said the sum of £ , the said the sum of £ , making together the sum of £ ; and that the said capital shall from time to time during the continuance of this partnership, be considered as the property of them the said parties respectively, in the shares and proportions aforesaid; and in consideration of the true and faithful services to be rendered by and derived from the said (*acting copartner*) in and about the manufacturing and making of and other like articles, and of the covenants hereinafter contained by and on his part, it is hereby agreed that no capital shall be required to be advanced by him, but that all the profits, gains, and interest of and in the said partnership trade, concern, or business, shall be from time to time during the continuance of this partnership divided nevertheless into equal parts or shares, unto whereof he the said (*acting copartner*) shall be entitled, unto other whereof the said shall be entitled, unto other whereof the said shall be entitled, unto, &c. and unto the remaining whereof the said shall be entitled; and that all and every the said parties, in proportion to their several and respective shares of and in the said capital shall bear and pay the debts and losses which shall from time to time be incurred by or happen in or to the said partnership trade, concern, or

business. AND that the said partnership trade, concern, or business shall during the continuance of this partnership be carried on at afore-said, and at or in such other place as the said parties, or the major part of them, shall think proper; and that the whole yearly rent of the said land and premises so agreed to be taken by the said (*acting copartner*) as aforesaid, and the rent of any other place to be hereafter taken for the purposes of said joint concern, together with all parliamentary and parochial taxes, costs, charges, and expenses, of buildings, repairs, and improvements attending the same, and of performing the covenants contained or to be contained in any lease so taken or to be taken as aforesaid; and also the wages of journeymen, workmen, and servants to be employed in or about the said partnership trade, concern or business; and also the expenses of coals, candles, oil, and lights, horses, carriages, and all other expenses incident to carrying on the said joint trade, concern, or business shall be borne, defrayed, and paid out of the yearly profits and proceeds of the said concern, and in case such profits shall prove incompetent to pay and defray all such payments and expenses, then and from time to time as often as it shall so happen all and every the said parties hereto shall and will severally contribute to the payment thereof according to their several shares and proportions in the said concern as aforesaid. AND that the said partnership concern shall be managed and carried on, and all purchases, sales, bills of parcels, bonds,

COPART-
NERSHIP.

*Manufacturers
and Dormant
Partners.*

Expenses to be
paid out of
proceeds.

Business to be
carried on in
the name of the
acting copartner
only.

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

**Books of ac-
count to be
kept by acting
partner.**

notes, letters, bills, receipts, payments, contracts, securities, dealings, and transactions which shall be made, given, or taken for any matter or thing concerning the same, shall from time to time be so made, given, taken, and entered into in the name of the said (*acting copartner*) alone. AND that also all goods, wares, and merchandises bought and sold, received in, or delivered out, and the respective rates and prices at which the same were bought and sold, received in, or delivered out; and all monies, payments, and securities; and dealings in general relating to the said joint concern or business; and all debts, contracts, and other things in any ways conducive to the manifestation of the affairs and business of the said joint concern and copartnership, shall from time to time be daily charged and entered by the said (*acting copartner*) in proper books for that purpose, to be provided out of the profits of the said joint concern, and the entries to be made in such manner as other persons of the same or other like business usually do or ought to do, whereby the fair and clear account and state of the said copartnership concerns may appear; and in particular that a book or books shall be kept for the entry of the account of cash to be received and paid on account of the said joint trade concern or business; and that all such books of account, and all bonds, bills, notes, and securities, and all accounts, evidences, letters, and writings relating to the said partnership shall be kept at the counting-house belonging to the said manufactory, and

whereto each of the said parties shall be at liberty at all times to resort during the usual hours of business, as well during the continuance of the said partnership as after the determination thereof, (until all matters relating thereto shall be wound up and closed) and to have the sight, perusal, and examination thereof, and to take copies or extracts of all or any part thereof, without any hindrance or denial whatsoever; and that no one of the said parties shall secrete or remove, or cause or procure to be secreted or removed any of such books, securities, evidences, deeds, or writings as aforesaid, (save only and except in cases wherein it shall become necessary that the same or any of them shall be produced in or by order of a court of judicature, on behalf of any one or more of the said parties, upon reasonable notice thereof to be by him or them on whose behalf the same may be required to be produced, given to the others of the said parties, in which case all the costs and expenses (if any) attending such production shall be wholly paid and borne by the party or parties requiring the same. . AND that the said (*acting copartner*) shall during the continuance of this copartnership be the keeper of the cash, bonds, bills, notes, and other securities belonging to the said joint trade or partnership, and who shall keep a just and true account thereof, and likewise of all his payments thereout and application thereof, in a book to be provided as aforesaid; and shall once in every month balance his accounts in such book, exhibiting, if required

COPART-
NERSHIP.

*Manufacturers
and Dormant
Partners.*

But to be open
to the inspection
of the dormant
partners.

And not to be
removed except
to give evidence.

Acting partner
to keep the cash
book.

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

Cash received
by dormant
partner, to be
paid over to
acting partner.

Parties will be
faithful to each
other.

by any two of the other partners, the particulars of the cash, notes, bills, bonds, and other securities and copartnership papers, and that the said cash book shall also be kept in the counting-house of the said trade, for the inspection and perusal of all the said partners, in like manner as the other books of the said partnership are agreed to be kept. AND that if at any time any cash or bills, or other securities on the copartnership account, shall be received by any of the said partners, other than and except the said (*acting copartner*), the same shall be by the party receiving the same immediately paid over to the said (*acting copartner*), and in case default shall be made by any partner so receiving money on the copartnership account in paying over the same for the space of seven days, then and in every such case, that a sum equal to £20 per cent. on the sum so declaimed shall be charged against the defaulter by way of liquidated damages, and be retained out of his share of the profits, and added to the capital for the general benefit of the concern, and in case of the share of the defaulter being incompetent to pay such damages, then that the same shall and may be recoverable by an action of debt at the suit of the other partners or any of them.

AND further, that every of the said parties shall and will be just, true, and faithful to the others and other of them respectively, in all their transactions, accounts, and dealings, concerning or relating to the said partnership, and shall and will do their utmost on all occasions to advance

and promote the true interests thereof. AND that neither of them shall or will in any wise buy, sell, or deal in or any other articles in which the said partners shall deal, nor be concerned with any other person or persons whomsoever in the same trade or business during this copartnership, without the previous consent in writing of all the other partners, other than on the copartnership account. AND that neither of the said parties shall employ the said partnership stock, or any of the gains or profits thereof, or engage the credit thereof in any manner whatsoever, but upon the account and for the sole use and benefit of the said joint concern. AND in case any of the said parties shall, for the convenience of the said trade, concern, or business, lend to or bring into the said partnership trade, concern, or business any sum or sums of money over and above his or their respective shares and proportions of the said capital sum of £ , as hereinbefore mentioned, and which they are hereby respectively empowered to do with the consent of the other partners or the major part of them, the same shall be immediately entered in the cash books of the said partnership, as a debt due to the partner lending the same, and shall forthwith become a charge upon the said partnership estate and the gains and profits thereof, and shall be first repaid with interest after the rate of £5 per cent. per annum, such interest to be computed from the time of bringing in such further sum or sums, before any division of the profits shall be

COPART-
NERSHIP.

*Manufacturers
and Dormant
Partners.*

Neither party
will embark in
any other con-
cern.Will not mis-
employ the
capital stock.If either party
lend capital,
he to have in-
terest, &c.

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

To be with-
drawn on notice.

Parties may
borrow money
with joint con-
sent.

Buildings, &c.
to be insured.

made among the said partners; and that the partner or respective partners lending any such sum or sums of money shall be at liberty to take such interest out of the said partnership cash quarterly, at the end of every three months, from the time or respective times of advancing or lending the same; and if the party lending require the principal to be repaid, or the parties borrowing require the party so lending to take back his principal, the same shall in either of such cases, upon six months' notice, be taken out of the said capital, together with all interest that shall be then due for the same, and if the party lending shall neglect or refuse to take back the same upon such notice as aforesaid, then all the interest thereon shall cease from the time of the expiration of such notice. AND further, that the said partners shall and may, by and with the joint consent of all or the major part of the said parties in writing, borrow and take up at interest any sum or sums of money from any person or persons whomsoever, for supporting the credit of the said joint concern or business. AND that the buildings, apparatus, utensils, and all of the other copartnership articles of a perishable nature, shall at all times during the continuance of this partnership be insured out of the monies of the said partnership business against loss or damage by fire, in some or one of the public offices of insurance in the city of London or Westminster, in the names of all or some of the said parties, and that the monies to be received from the office of insurance under the policy, in

the event of loss or damage to the copartnership effects by fire, shall with all convenient speed be laid out in reinstating or rebuilding (as the case may require) all the buildings, apparatus, articles, and things so destroyed or damaged by fire. AND it is also further agreed, that each partner shall and may be at liberty, and he is hereby authorised, to take out of the said partnership cash, on the first day of every month, the sum of £ for each and every share he holds in the said partnership trade, concern, or business, by way of subsistence-money, for which receipts shall be duly signed and given; and that the same shall at the respective times of taking out the same be regularly entered in the cash-book of the said partnership, so that the same may be carried to the debit of their respective accounts in part of their respective shares of the profits of the said concern. AND that neither of the said parties shall sell or deliver any goods, wares, merchandises, bills, notes, or other things whatsoever, belonging to the said joint trade, concern, or business, upon trust or credit to any person or persons, whom any two others of the said partners shall, by writing under their hands, caution or forewarn the other partners not to trust or give credit unto; and in case any or either of the said partners shall give credit after and in opposition to such notice, he or they so offending shall alone stand to the risk thereof, and shall become charged for the same in his or their account with the said partnership concern, with the addition of £5 per cent. on the amount

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

Parties may
take out sub-
sistence-money.

Parties not to
give credit, &c.
without mutual
consent.

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

Nor purchase
materials be-
yond a certain
amount.

Will not accept
bills, &c.

All securities
to be duly en-
tered.

of the selling price or prices of the goods so by him or them sold and trusted contrary to such notice as aforesaid. AND that no one of them the said partners shall at any time order or purchase any goods, wares, or merchandises on account of the said partnership trade, if he or they shall have received notice in writing, signed by any others of the said partners, not to order or purchase such goods, nor shall any or either of the said partners at any time order or purchase any goods, wares, or merchandises of any sort or kind whatsoever, beyond the value or amount of £ , without the previous consent in writing of of the said partners. AND that neither of them shall at any time during the continuance of the said partnership, on any pretence whatever, make, give, or accept, sign, indorse, or execute any bond, bill of exchange, promissory note, or other instrument in writing, in the name, firm, or style of the said partnership, unless for value really and *bond fide* had and received, and brought to account in the partnership books; and that all bonds, bills, notes, or other securities, given, made, or accepted, signed, indorsed, or executed for value really had and received, and brought to account in the partnership books, shall immediately, or as soon as possible thereafter, be by the party so having given, made, or accepted, signed, indorsed, or executed the same, entered in the partnership books, and that the party making, giving, or accepting, signing, indorsing, or executing any such bond, bill of exchange, promissory note, or other

document in writing, in the name, firm, or style of the said partnership, when the said partnership shall not have really had and received value, and brought the same to account in the said partnership books, in the proper book kept for that purpose, or omitting designedly to enter, or cause to be entered, such bond, bill of exchange, promissory note, or other document by him made, given, or accepted, signed, indorsed, or executed, for value really had and received, and brought to account as aforesaid, shall alone make good, and pay and discharge the same out of his private and separate estate, and the joint stock and partnership concern shall be in nowise chargeable therewith. AND that neither of the said parties shall or will compound, release, or discharge any debt or debts which shall be due or owing to them on account of the said joint concern, for any less sum of money than shall be actually due (the usual reasonable abatements only excepted), nor sign any bankrupt's certificate, letter of licence, or other instrument in writing, whereby any sum or sums of money due, or to grow due, to the said joint concern, may be delayed in payment or otherwise discharged, without the consent of of the said partners first had and obtained in writing in that behalf, (unless the particular exigency of the case shall actually, to the satisfaction of arbitrators, to be nominated as hereinafter is provided for that purpose, in case the parties differ, require the same to be done at a time when such consent, by reason of their absence or sick-

COPART-
NERSHIP.

*Manufacturers
and Dormant
Partners.*

In default, party
offending to
make good the
same.

Will not com-
pound debts.

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

**Nor confess
judgment, &c.****Nor otherwise
put the joint
trade to risk.****Will protect
the joint trade
against separate
debts.**

ness, cannot be had). AND that none of the said parties shall enter into or confess any statute, recognizance, judgment, bond, or security, or become bound as bail-surety to, with, or for any person or persons whomsoever, without the previous consent in writing of of the said partners, nor shall or will any of the said partners transact any money matters, nor discount any bill or note with the money of the said partnership concern, or any part thereof, nor purchase or make any kind of bargains in the public stocks or funds, nor any other private bargains whatsoever, nor underwrite any policy or policies of insurance, nor do, or wittingly or willingly suffer to be done, any act whatsoever, whereby the said joint trade or the stock thereof shall or may be injured, or by means whereof the said joint stock, monies, debts, and effects of the said partnership concern, or the said copartners or any of them, or any of their property, shall or may be, or become liable to be attached, sued, extended, or taken in execution, or in any manner incumbered or affected, without the joint consent in writing of of the said partners, first had and obtained.

AND that every of the said partners shall and will pay and discharge his own private debts, and save and keep harmless, and effectually indemnified his copartners, and their and every of their lands, tenements, goods, and chattels of, from, and against all losses, costs, and expenses to be incurred or occasioned by or on account of such private debts; and that if the said joint stock and

partnership estate and effects shall be attached, seised, or taken in execution, on the separate account of any or either of the said partners, that in every such case, and when and as the same shall happen, it shall and may be lawful to and for the others of the said partners to redeem the same out of the share of the party or parties who shall have made such redemption necessary, and the amount thereof with lawful interest thereon until repaid, to be charged in the partnership books on the debit side of his or their account; and in case such share shall be incompetent to such redemption, then that the same shall be effected, as soon as may be, by and out of the capital, whereupon the amount to be paid shall be recoverable by action of debt against the party or parties last mentioned, at the suit of the said other partners, or any two of them; AND that no clerk, book-keeper, shopman, or other servant, shall at any time be taken, or employed, or discharged, without the consent of two of the said parties; and if any loss or damage shall arise or happen to the said partners by reason of any embezzlement or other misconduct of any such clerk, book-keeper, shopman, or other servant, the same shall be borne and sustained by the said parties, according to their several shares and proportions aforesaid; AND that upon the

COPART-
NERSHIP.

*Manufacturers
and Dormant
Partners.*

No clerks to be
hired, &c. with-
out consent.

Accounts to be
made up yearly.

day of in every year during this copartnership, a general account shall be taken, settled, and stated by and between the said parties, touching the said joint trade, concern, or business, and the stock, increase, profit, value, and

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

Abstracts of ac-
counts to be
made and
signed.

loss thereof, and likewise of all debts and sums of money owing and payable to the said partners in respect of the said joint trade, and that all and every such account and accounts shall, from time to time, be fairly written and entered into a book annually provided by the trade for that purpose, to be kept with the other books of the said partnership in manner aforesaid, at the close whereof the said parties shall severally subscribe their names, signifying their approbation and consent to the stating of such accounts; and an abstract of the same, containing total amounts, shall be copied into books, (that is to say) one book for each partner; and each of such books shall also be subscribed by every of the said partners with his name, signifying his approbation thereof, and consent thereto; and each such party shall have and keep one of such books, so signed by all the said partners, in his custody, which said accounts, so passed and subscribed as aforesaid, shall be binding and conclusive, and shall not be afterwards called in question, unravelled, or varied by any or either of the said parties, in any manner, or upon any pretence whatsoever, unless some error shall be discovered therein within the space of thirty days next after the signing the said annual account, to the amount of £ and upwards, in which case the error so discovered shall be amended and rectified, but no other part of the said account shall be set aside or impeached; and after finishing, stating, and settling such accounts respectively, the nett and clear gains and profits

arisen and made by and from the said joint concern and dealings for the preceding year, for the time being, shall be taken, shared, and divided by and between the said parties, in the shares and proportions hereinbefore mentioned; or otherwise the whole of such profit, or such part thereof as all the said parties, by writing under their respective hands, shall mutually agree upon, shall be added to their capital stock, as and for an increase thereof, and be carried to their respective accounts accordingly, in the books belonging to the said joint trade; AND further, that in case any of the said parties shall depart this life during the continuance of this partnership, the survivors or survivor of them, and the executors and administrators of such survivor, shall be chargeable and stand charged with the value of the clear balance, share or shares, which on the then last annual account shall have appeared to be due and owing unto the deceased partner or partners, together with an allowance of £ sterling per cent. thereon, from the last settlement of accounts, in lieu of interest of money and profits in trade (after deducting all such payments and debts as may have been received by, or be due from, the deceased party or parties, from and unto the copartnership since the last settlement of account); AND that the surviving partners or partner shall duly execute and deliver a bond (at their or his expense) for payment to the executors or administrators of such deceased partners or partner, of such balance or share and allowance (after

COPART-
NERSHIP.

*Manufacturers
and Dormant
Partners.*

In case of death of partner, survivors to be answerable for balance due to him.

And give bond for payment by instalments.

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

If partner die
before first
statement of
accounts, his
capital to be
returned.

making such deductions as above-mentioned), with interest on the gross amount thereof from the day or respective days of his or their decease or respective deceases, after the rate of £5 per cent. per annum, within the space of years then next after, by equal payments, the first payment whereof to be made within calendar months next after such decease, the second payment whereof to be made within calendar months next after such decease, the third payment whereof to be made within calendar months next after such decease, &c. and the remaining payment to be made within calendar months next after such decease; AND in case any of the said partners shall happen to depart this life before the first general settlement of the said partnership accounts shall take place, then that the survivors of the said partners shall be chargeable and stand charged with the amount the deceased party or parties had brought into the said joint trade as his or their share or respective shares of the said capital, with an allowance of £ per cent. thereon from the day of the date of these presents to the day or respective days of his or their decease, or respective deceases, in lieu of interest of money and profits in trade, after deducting all such payments and debts as may have been made to, and be due from, the deceased party or parties, on the copartnership account; and shall duly execute and deliver a bond, at their expense, for payment to the executors or administrators of such deceased

party or parties, of the gross amount thereof, with interest for the same after the rate of £5 per cent. per annum, from the day or respective days of his or their decease or respective deceases, within the space of eighteen months then next after, by three equal payments, the first payment whereof to be made within six calendar months next after such decease, the second payment whereof to be made within twelve calendar months, and the last or remaining payment to be made within eighteen calendar months next after such decease; AND further, that all the profit and loss which shall arise upon the said partnership trade after the settlement of such annual account preceding the decease of such partner or partners so dying as hereinbefore mentioned, or after the day of the date of these presents, in the event of the decease of such partner or partners taking place before the settlement of the first general account of the said partnership until the death of such deceased party or parties, shall belong to, and be received and borne by, the surviving partners or partner, according to their or his original share or shares in the said capital; And that the surviving partners or partner shall enter into a bond, at their or his expense, in a reasonable penalty, for effectually indemnifying and saving harmless the executors or administrators of such deceased partner or partners, from and against all and every the debts and engagements which shall be then due, owing, or subsisting, by or from or with regard to the said copartnership, upon the

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

Intermediate
profits to belong
to survivors,

who are to in-
demnify de-
ceased partner's
effects from
debts, &c.

**COPART-
NERSHIP.***Manufacturers
and Dormant
Partners.**Executors of
deceased part-
ner to assign his
share,**which is to be
divided between
the survivors.**Liberty for
partners to re-
tire on notice.*

executors or administrators of such deceased party or parties transferring, assigning, and releasing, to the survivors or survivor of the said partners, the shares or share and interest of the deceased partner or partners of and in any patents, leases, apparatus, and other the copartnership effects, save only and subject and without prejudice to such interest, right, and claim, as the executors or administrators of the deceased partner or partners may lawfully have and be entitled unto under the bond so agreed to be executed as aforesaid; AND further, that the shares or share of the deceased partners or partner in the said copartnership effects shall be divided amongst the surviving partners equally, in case such survivors do within the spaces or times hereinbefore prescribed for payment of the debt or debts due to the deceased partner or partners as aforesaid, duly contribute agreeably to such payments; but in case such contributions be not so made, or if some of the partner or partners fail to contribute any thing, then that such shares or share shall go and belong to the partners or partner contributing, according to the rate and extent of their or his contributions; AND further, in case any of the said partners shall be desirous to retire from and quit the said copartnership at the expiration of the first years thereof, that it shall and may be lawful to and for him and them so to do, upon giving six calendar months previous notice in writing, at any time of the year, under his or their hand or hands, to the other partners, of such his

or their intention, in which case the partner or partners so quitting the said copartnership, shall be entitled to receive no more than the balance of capital and profits which appeared due to him or them respectively, on the then last day of settling the copartnership accounts, without any interest thereon, to the time he or they shall so quit the said partnership, and without having any allowance for profits (save only what he or they may lawfully be entitled to for subsistence-money, as aforesaid); AND that the continuing partners or partner shall duly execute and deliver a bond, at their or his expense, for payment to the partner or partners so quitting, his or their respective executors or administrators, of the amount of such balance, with interest for the same after the rate aforesaid, from the time of his or their quitting the copartnership, within the space of calendar months then next after, by four equal payments, the first payment whereof to be made within six calendar months next after such quitting, the second payment whereof to be made within twelve calendar months, the third payment whereof to be made within eighteen calendar months, and the last or remaining payment whereof to be made within twenty-four calendar months next after such quitting; And that all the profits of such quitting partner or partners which shall lapse and fall in, as not being claimable by him or them, shall belong to the continuing partners according to their shares and interests in the said partnership concern; AND

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

Continuing partners to pay over balance to him,

and subsequent profits to go to continuing partners.

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

*Continuing
partners to in-
demnify against
debts, if the
trade be solvent.*

*Expiration of
copartnership
stock to be
divided.*

in case the said copartnership concern shall appear to be then solvent, and fully competent to the discharge of all lawful demands thereon, then such continuing partners shall (if required) enter into a bond, at their expense, in a reasonable penalty, for indemnifying and saving harmless the partner or partners so quitting, and his and their respective heirs, executors, and administrators, from and against all and every such debts and engagements which shall be then due, owing, or subsisting, by, from, or with regard to the said partnership estate, upon the partner or partners so quitting, transferring, assigning, and releasing to the others of the said partners all his or their share and interest, or shares and interests, in any patent or patents, leases, apparatus, and other the copartnership effects, save only and without prejudice to such right, claim, and interest, as such quitting partner or partners may have and be entitled unto, under the bond last mentioned; AND further, that at the expiration of the said copartnership, whether by effluxion of time or otherwise, a general account in writing shall be taken of all the stock, goods, wares, merchandises, monies, and other things remaining and being in the said joint trade, or owing or belonging to the said partners on account thereof, and also of all debts due or owing by them to any person or persons on account of the said joint trade; and upon finishing the last-mentioned account, the partner who shall have advanced or lent any sum of money more than the other to the said co-

partnership, shall be first paid and satisfied such sum of money as he shall have so advanced or lent more than the other, and which shall then be due and owing, and all interest then due thereon, and all other debts which shall be due and owing from or by the said copartnership, shall be also satisfied and discharged, and then the residue of the goods, wares, merchandises, monies, stock, debts, and effects, belonging, due, or owing to the said copartnership or joint business, shall, with all convenient speed, be parted and divided between the said partners according to their then respective shares, proportions, rights, and interests, in the then copartnership capital, and to their respective executors and administrators; AND that with regard to outstanding debts, it is hereby agreed that the said partners shall and will appoint some person or persons, to be approved of by the major part of them (with a due recompense or allowance for his or their care and trouble therein), to receive and collect such outstanding debts; who shall, upon the last day of every month (if the same shall not happen to be a sabbath), and if so, then the day before, account for and pay over, in such manner as all the said partners shall direct, the monies which shall from time to time be so collected and received, and that in case any of the said debts shall, at the end of the term of three years, remain outstanding and unreceived, then they the said partners shall, with all convenient speed, put the said debts under three heads, good, dubious, and desperate debts, and

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

Outstanding
debts to be
got in by a col-
lector.

Debts remain-
ing at the end
of three years
to be classed.

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

Division of
stock to be made
by indifferent
persons,and parties to
assign to each
other.

allot unto each other a just and fair proportion of the said three sorts of debts accordingly, in order that the same may be equally and fairly divided amongst them, according to their several and respective interests in the said copartnership concern; AND for facilitating such division and distributing of the copartnership property, as well that got in as that outstanding, it is hereby agreed that the same shall be made by disinterested persons experienced in the trade, one whereof to be nominated by every of the then partners, his executors or administrators, with power for the persons so to be nominated to choose an umpire to decide between them (if necessary), which said several persons, or the major part of them, or their umpire, if called upon to decide, shall have full power to allot unto either of the said partners, his executors or administrators, as and for the part or the whole (as the case may be) of his or their share the entirety of and in any leasehold or such other copartnership property as from its nature may not be devisable without being converted into money; AND further, that upon such division being made, the said then partners shall and will, at the request and expense of the party requiring an assignment aforesaid, assign unto each other respectively, and their respective executors, administrators, and assigns, the share and shares of the property so to be allotted as last mentioned, and shall and will join in and execute all such powers as shall be necessary to enable each other to sue for, or otherwise act

with regard to the property so to be assigned, in such manner as the partner or partners taking such assignment shall think proper, the party assigning being effectually indemnified by the party requiring such assignment, from any subsequent expense and responsibility with regard to the property aforesaid; PROVIDED ALWAYS, and it is hereby further declared and agreed, by and between the said parties, that if any of the said partners, after the determination of the said copartnership, shall give any fresh or further credit to any person on the copartnership account, such partner or partners shall take the same upon himself and themselves, and the account of such credit shall be debited on his or their account, as so much to be received by him or them in part of his or their share or shares upon the final division of the copartnership effects; PROVIDED ALWAYS, and it is hereby further agreed and declared, if any of the said partners shall assign or part with his share and interest of and in the said copartnership property, or any part thereof, or wittingly or willingly commit or suffer to be done any fraud or collusive act to the prejudice or discredit of the said partnership trade, or any of the said partners, then that copartnership shall be considered as therein instantly determined as to the offending party only, who shall in such case be paid the amount, in value, of his or their share or shares of the said partnership stock and effects then in hand, according to the

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

No credit to be
given after
expiration of
copartnership.

Malpractices of
either of the
parties a dis-
solution of part-
nership.

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

Defects in these
presents to be
amended.

prime or first cost thereof, without being entitled to any profit or interest therein, by the other continuing partner or partners, within the space of three years after such offence committed as last mentioned, to be paid by equal instalments of six months each, with lawful interest for the same from the time of such offence committed, and to be secured by the bonds of the continuing partners, in such manner as is hereinbefore provided in the case of any of the said partners quitting the said copartnership; and that it shall be thereupon lawful for the continuing partners to advertise the dissolution of the said copartnership, *quoad* the offending and discharged party, and to serve notices of such dissolution on any persons whomsoever; but that the said copartnership shall be considered as continuing and subsisting with regard to the other partners, under and subject to the clauses, terms, and restrictions, contained in these presents; PROVIDED ALWAYS, and it is hereby further agreed and declared, by and between the said parties, in case at any time hereafter it shall be found or discovered by the said partners, or the major part of them, for the time being, that these presents, or any of the covenants and agreements herein contained, are in any part defective, or not sufficiently clear to act upon and fully to explain the intention and meaning of the said partners, or that the terms and agreements hereby entered into are too binding, or vague and uncertain, and counsel for and on behalf of the said partners, or such major part

as shall advise an alteration thereof, or addition thereto, that then and in such case every of the said then partners shall and will join in and execute such further deed or deeds as such counsel shall advise, to be prepared at the copartnership expense. AND THIS INDENTURE FURTHER WITNESSETH, that for further establishing the said recited agreement, and in consideration of the profits and emoluments which the said (*acting copartner*) expects to derive and have from the said capital, so to be made up by his said partners, and by such association of interests as aforesaid; he the said (*same party*) for himself, his heirs, executors, and administrators, DOTH covenant, promise, and grant, to and with the said (*other copartners*) and their respective executors and administrators, by these presents, that he the said (*acting copartner*) shall and will stand possessed of all patents, inventions, secrets, apparatus, utensils, and matters and things relating to the manufacturing of and other articles, which he now has, or shall or may have and acquire during the continuance of the said copartnership, IN TRUST for himself and all other his said copartners parties hereto, according to his and their respective shares, proportions, and interests, in the said joint concern as aforesaid; AND further, that he the said (*acting copartner*) shall and will employ his whole time (cases of sickness excepted) in superintending, managing, and conducting the said concern on the spot where the same is to be carried on for the general benefit of the concern, and

COPART-
NERSHIP.

*Manufacturers
and Dormant
Partners.*

FURTHER WIT-
NESS, acting
partners will
stand possessed
of stock, &c. in
trust for self and
dormant part-
ners.

Acting partner
will manage to
the best of his
skill.

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

Will hold the
premises on
like trusts.Decision of ma-
jority to bind
the minority.Reference of
disputes to
arbitration.

use and exert his utmost influence, zeal, and endeavour, to extend and promote the same. AND the said (*acting copartner*) DOTH hereby declare, that he, his executors or administrators, shall and will stand possessed of the lease so granted, or agreed to be granted unto him as aforesaid, IN TRUST only for himself and all other his said copartners parties hereto, according to his and their respective shares, proportions, and interests, in the said joint concern; PROVIDED ALWAYS, and it is hereby further agreed and declared, that no one of the said partners, other than and except the said (*acting copartner*) shall be bound to act or employ himself in the said joint businesses further than as he may voluntarily choose or think proper to do; PROVIDED ALWAYS, and it is hereby lastly agreed by and between the said parties, that in all cases of difference of opinion between the said partners touching any copartnership transaction, the majority in number for the time being shall have power to decide and bind the minority; but in case any difference, dispute, question, or controversy, shall happen to arise between any of the partners for the time being, or between any of them and the representatives of a deceased partner, touching and concerning the said joint concern, trade, or dealing, or any matter or thing relating thereto, or as to the intent, meaning, or operation, of any clause in these presents contained, and such difference shall not be settled by the parties in difference within thirty days next after the difference shall arise, then that

the matter or dispute shall be submitted and referred to the arbitration and decision of three disinterested persons, to be chosen and appointed as after mentioned (that is to say) one whereof to be chosen by each contending party, and the other by such two persons so to be first chosen; and that whatsoever award the said three arbitrators, or any two of them, shall make and deliver, in writing under their hands and seals, within twenty days next after such reference, shall be binding and conclusive between and upon all the said parties in difference, and shall be performed, observed, and kept by them accordingly, without suit or further controversy; and for enforcing the performance and observance of every such award, it is hereby agreed, that the same, and the submission thereto herein contained, or made, or entered into, in and by any other separate instrument or instruments, shall, from time to time, be made a rule in his majesty's court of King's Bench, at Westminster, according to the directions of the statutes in that case made and provided. AND FURTHER, that it shall and may be lawful to and for every of the said partners, his executors or administrators, having made such written request to have the matter or matters in difference decided by arbitration in manner aforesaid, to produce and plead such written request in complete bar, or discontinuance, or dismissal of any action at law, or suit in equity, which shall or may be brought or instituted by any of the partners, his executors or administrators, to whom such request

COPART-
NERSHIP.

*Manufacturers
and Dormant
Partners.*

Award to be
final.

And made a
rule of court.

May be pleaded
in bar to suits.

**COPART-
NERSHIP.**

*Manufacturers
and Dormant
Partners.*

shall be made, and which request being so pleaded or produced, it is hereby agreed, shall (so far as the rules of law or equity will permit) operate accordingly(1). IN WITNESS, &c.

Variations.

(1) See various other clauses, &c. to be substituted for, or added to, those contained in the above precedents, where the agreement of the parties or the circumstances of the copartnership may require it, *ante*, No. III. p. 13, *et seq.* in the margin.

COPART-
NERSHIP.Bankers.

No. VII.

Deed of Copartnership between Bankers.

Variations *where the Parties are London, and where Country Bankers* (1).

THIS INDENTURE, made the day of , in the year of the reign, &c. and in the year of our Lord . BETWEEN (*one party*) of, &c. of the first part, (*another party*) of, &c. of the second part, (*a third party*) of, &c. of the third part, and (*a fourth party*) of, &c. of the fourth part.

WHEREAS the said (*all parties*) have agreed to carry on and become copartners together in the business of bankers, and the several concerns incident to or usually transacted in the banking business in London, [*or a country bank*] for the term of years to be now next ensuing, and that the same shall be conducted and managed at, &c. under the firm of (*all the parties*), upon the terms and conditions, and under the restrictions hereafter expressed. NOW THEREFORE THIS INDENTURE WITNESSETH, that for and in consideration of the

Agreement to become copartners.

Where the business to be carried on.

WITNESS.

(1) See also variations and notes to No. III. *ante*, p. 83, *et seq.*

**COPART-
NERSHIP.**

Bankers.

**Terms of co-
partnership.****Constant at-
tendance to be
given.****Bills, &c. to be
given in the
name of the
firm.**

special trust and confidence which the said partners have and repose in each other, and for divers other good causes and valuable considerations them thereunto moving, they the said (*parties*) for themselves severally and respectively, and for their respective heirs, executors, and administrators, Do, by these presents, and each of them for himself separately and distinctly, and for his heirs, executors, and administrators, doth covenant, promise, and agree, with and to the other and others of them, their and his respective executors and administrators, in the manner following (that is to say) that each of them the said (*all parties*) shall and will, within the space of days from the date hereof, bring into or make up the full sum of £ , as his capital stock to be employed in or for the said copartnership business and the concerns thereof, and answering the expenditure and losses which may happen therein.

THAT all and every of the said parties (unless in case of sickness, or necessary or reasonable absence with the consent of the others of them), shall give daily and constant attendance at the banking-house for the time being, from the hour of o'clock in the morning till the hour of in the afternoon, during the continuance of the said copartnership, Sundays, Christmas day, and Good Friday, only excepted.

THAT all bills, drafts, promissory notes, and all indorsements thereon, and all receipts, payments, letters, or other matters or things relative to the said banking business, shall be signed by some

one or more, or by some acting and confidential clerk especially appointed by all of the said parties for that purpose, in the name and style of aforesaid (1).

**COPART-
NERSHIP.**

Bankers.

If either party
act fraudulently,
partnership may
be dissolved.

THAT in case any or either of the said parties shall sign or execute any bills, drafts, notes, or any acceptances thereof, or indorsements thereupon, or any bonds or other securities whatsoever, in the name and firm of the said copartnership, or shall receive any money, bills, drafts, or any other matters or securities whatsoever, for or on account of the said copartnership, which he shall not bring to the copartnership account, on the same, or within one day next after the signing and executing and receiving the same respectively, then and in either of the said cases, the party or parties who shall have been guilty of such neglect or misconduct, shall be liable to be immediately expelled or excluded from the said copartnership by a resolution of the others of the said copartners, or the major part of them, in as entire a manner as if the said term of (subject

(1) If it be a country bank, add,

Country bank.

“THAT the said parties shall make use of the banking house of , in London, or such other London banking house, as the major part of them the said parties shall, from time to time, think proper, for the purpose of making remittances, drawing bills, and negotiating the various species of securities, and prosecuting such other matters and things as shall be requisite in or for the said copartnership affairs in London.

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only as hereinafter is provided) had expired by effluxion of time, or he or they had departed this life; and a like notice of their or his exclusion shall be given in the London Gazette and such daily or other papers as the others of the said parties, or either of them, shall think fit.

Usual clauses.

THAT, &c. &c. [*add usual clauses in deeds of general copartnership* (1).]

On death of
either party, a
new one may be
admitted.

THAT in case any or either of the said parties shall be expelled or excluded for any of the causes hereinbefore mentioned, or shall happen to die, during the continuance of the said copartnership, then and in such case, and as often as any such event may happen, the major part of the surviving copartners shall be at liberty, and shall have full power and authority, to admit and receive into the said copartnership such other person as they shall think fit, in the place of such expelled, excluded, or deceased copartner.

Deficiency of
capital for a
given time to be
a cause of ex-
pulsion.

THAT in case any or either of the said parties shall at any time during the continuance of the said copartnership, have a less capital therein for the space of days, than his said capital or sum of £ , it shall be lawful for the others of the said parties, or the major part of them, having their full capital therein, to give days notice, in writing under their or his hand or hands, of such deficiency, and if the same shall not be

Usual clauses.

Defect of
capital.

(1) See *ante*, No. III. p. 22, *et seq.* in margins.

The necessity there is that the whole capital in a banking concern should be always at hand, gives rise to more penal enforcements than are requisite in ordinary cases.

made good at or before the expiration of the said notice, the said other or major part of the other of the said parties may lawfully expel and exclude such party or parties from the said copartnership.

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PROVIDED ALWAYS, that in case any or either of the said parties shall have less than his proper capital or sum as aforesaid, and the other, or major part of the other of the said parties, shall not think fit, or shall not determine to expel or exclude such party or parties from the firm of the said copartnership, yet nevertheless such party or parties shall, from the time of such deficiency, be entitled to no more than interest, after the rate of £5 per cent. per annum, for the capital which he shall actually have therein, until the deficiency thereof shall be fully made up, it being hereby agreed, that in the mean time, all and every the profits of, or to be derived from, the said copartnership concerns, shall be paid and divided unto and between the other or others of the said parties whose capital shall be full and complete, as aforesaid. PROVIDED ALWAYS, that such party or parties shall be considered in all other respects as continuing a copartner or copartners in the said concern, and subject to a like proportion of loss and expenditure as if he or they had his or their whole and complete capital therein. PROVIDED ALSO, that in case any or either of the said parties shall be guilty of any omission or neglect, or commit or do any act, matter, or thing, whereby he shall be liable to be expelled or excluded the said partnership, but the others, or a major part of the

And such party
to be excluded
from profit in
the mean time.

But subject to
loss, &c.

Either party
may withdraw
if the others be
guilty of breach
of articles.

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other of the said parties, shall not think fit, or not determine to expel or exclude him or them on that account, then and in such case, any or either of the other parties dissenting from, and constituting a minority in the question as to such expulsion or exclusion, shall be at liberty to take his or their name, or respective names, out of, or from, the said firm and copartnership, together with his capital therein, upon the terms and conditions hereinafter mentioned.

Party expelled
or withdrawing,
to be entitled to
receive his
capital with
interest,

THAT in case any or either of the said parties shall be expelled or excluded from the said copartnership in pursuance of any article, clause, or provision herein contained, or in case any or either of them shall take or withdraw his or their name or names out of or from the firm, in pursuance of the hereinbefore lastly mentioned clause or agreement, then and in every such case the party or parties so expelled or excluded, or withdrawing his or their name or names out of the firm, shall be entitled to and receive from the continuing parties such money as shall appear to have been due to, and unreceived by him or them so expelled, excluded, or withdrawing, at the settling of the last half-yearly accounts then next preceding such expulsion, exclusion, or withdrawing, together with interest for the same after the rate of £5 per centum per annum, from the time of such settlement, to be paid to such party or parties, his or their executors or administrators, at the times, and in proportions following (that is to say) one third part thereof,

To be paid at
certain periods,

with such interest as aforesaid, at the end of six calendar months next thereafter, one other third part, with such interest as aforesaid, at the end of nine calendar months next thereafter, and the remaining one third part, with such interest as aforesaid, at the end of twelve calendar months next thereafter, unless such party or parties shall respectively have done or occasioned any manifest injury or damage to the said copartnership concerns in any respect whatsoever ; in which case the sum of money due to such party or parties respectively shall be retained and kept by the other of the said parties for or towards satisfaction for the injury or damage which shall have been so done or occasioned. PROVIDED ALWAYS, that in case any loss shall be sustained by the said copartnership betwixt the time of settling the said last general yearly account, up to the time of such expulsion, exclusion, or withdrawing, as aforesaid, such loss shall be borne and sustained equally by and between the party or parties who shall continue in the said concern, and the party or parties expelled, excluded, or withdrawing therefrom.

AND, &c. &c. (*Add provisions in case of the decease of either of the parties, or expiration of the term of the copartnership, clause for referring differences, &c.* (1). IN WITNESS, &c.

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except he shall
have damnified
the concern.

Intermediate
losses to be
borne by all the
parties.

Provisions in
case of death,
&c.

(1) See *ante*, No. III. p. 52, 58, *et seq.*

Death of parties
or expiration of
term.

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NERSHIP.

Company of
Proprietors.

VIII.

*Heads of a Deed of Copartnership between an un-
chartered Company of Proprietors (1).*

Style of the
company.

THAT the parties shall enter into and continue bound unto each other in copartnership, under the firm or style of _____, for the term of _____ years, determinable and subject to the rules and regulations hereinafter declared concerning the same, viz.

Where the con-
cerns to be car-
ried on.

THE concerns of the company to be carried on at _____, or other place to be hereinafter agreed upon by the major part of the proprietors.

Capital stock to
be brought in
by instalments.

The fund or capital stock of the company to consist of _____ numerical shares of the nominal value of £ _____ each, to be paid by instalments, in such manner as directors of the company, to be chosen as after mentioned, shall require.

(1) These heads for the formation of a company of proprietors, were drawn out by a practitioner of considerable eminence, and from which a deed of settlement was afterwards framed. The deed itself is too long and special for a collection of the present nature; but the heads may be useful by way of instructions for one of a similar kind. The last deed of settlement of the *Hope Assurance Company* (prepared by me and printed by the proprietors) may serve for a like purpose. As to the validity of copartnership associations of this sort, however, see opinions at the end of this precedent, and see also the remarks, *ante*, p. 121, n. (1).

Upon failure in payment of any of the instalments within days after notice, all former payments to be forfeited.

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If such payments be made before the day required, a deduction after the rate of £5 per cent. to be allowed by way of discount.

Failure in pay-
ment.

The shares to be increased beyond the nominal value of £ , if resolved upon at any general meeting.

Shares in the
capital.

No future call to be made upon any member in respect of his share beyond the sum originally subscribed, without the consent of a majority of three-fourths in number of the members present at a general meeting to be convoked for that purpose.

Future calls.

Any member may possess an indefinite number of shares, but shall not be entitled to more than one vote on that account.

Number of
shares.

No person to be admitted a shareholder unless approved of by at least of the directors for the time being, nor be entitled to vote at any general meeting until duly admitted a member according to the subsisting forms.

Admittance of
shareholders.

No proprietor to be answerable to the others beyond the amount of his own particular interest therein (1), nor be liable to any calls in respect thereof, after he shall have ceased to be a member.

Responsibility
of shareholders.

Each member to have a distinct and separate

Interest of
shareholders.

(1) See as to this clause, *ante*, p. 121, n. (1).

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of shareholders.**

right to his share in the capital stock, so as that the same may be assigned or bequeathed in his lifetime, and in case of his decease intestate, be transferrable to his representatives.

No assignee, legatee, or representative of any member, to be entitled to have any vote in the concerns of the company until approved of by the directors, and until he or she shall have subscribed the articles and regulations relative thereto (if required).

**Notice of ac-
quired interests
to be given.**

Every assignee, legatee, or representative of any deceased member, to give notice in writing to the directors of his or her title, within the space of months after it shall accrue, in order that the same may be registered. Such derivative shareholder to execute the copartnership deed, or such other instruments as counsel shall advise, within after his or her title shall accrue. And in default thereof, his or her interest to be forfeited.

**Expenses of
the company.**

The expenses attending the concerns of the company to be equally borne by the several proprietors, according to their respective shares and interests.

**Nett proceeds
of the capital.**

The net produce, after payment of expenses, to be placed in the banker's hands of the company, or invested on government or other securities, at the discretion of the directors, until the same shall be applied in payment of dividends, or otherwise disposed of by the vote of the company.

**Books of ac-
count.**

Books of account to be kept at the office of the

company for the inspection of the members, under proper restrictions.

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No dividend of profits to be made until the expiration of one year from the opening of the concern, unless sooner directed by a general meeting.

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As to dividends.

At the first general meeting after the expiration of the one year subsequent to the opening of the concern, an account to be made out of the then state thereof, that a due proportion of the net profits arising thereupon may be paid to the several members by way of dividend upon their respective shares.

All dividends payable in respect of shares to be claimed within years after the same shall be declared, or shall be forfeited.

No member to take advantage of any misnomer, or other legal defect, in legal or equitable proceedings against him or her.

No advantage
of pleadings.

If any member wilfully act contrary to the spirit of the clauses in the deed of settlement, or otherwise derogatory to the well-being of the company, such member to forfeit his or her right and interest therein.

Forfeiture of
shares.

If any member become bankrupt, he or she to cease thenceforth to be a member, and if such bankrupt be a director, or other principal officer of the company, his place to be supplied by a new election. And the interest of such bankrupt in the capital stock of the company to be disposed of by the commissioners, subject to the then subsisting rules as to admission of the purchasers to be members of the company.

Bankruptcy of
members.

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Approbation of
members.

General
meetings.

Decision by
ballot.

Three-fourths a
majority.

Choice of
directors.

Treasurer not to
be director.

Power of
directors.

No members to be admitted but subject to the approbation of the directors.

A general meeting of the members to be holden on the affairs of the company twice in every year, viz. in the months of and in each year, at such place as the directors for the time being shall appoint.

The decision upon all subjects discussed at general meetings to be by ballot, if required by any members.

Three-fourth parts of the proprietors present at any general meeting to be necessary to constitute an effective majority.

At the general meeting to be holden in the month of in each year directors to be chosen out of such of the members as shall be owners of at least two shares in their own right, and the remaining directors (after the first year) to be chosen from the other qualified members.

If any person chosen be then treasurer, or hold any office in the concerns of the said company, such election to vacate the prior office, and the vacancy to be filled up from amongst the directors of the preceding year.

The directors to have power to conduct and manage the general concerns of the company, to make provisional rules and regulations concerning the same, to convoke the general and other meetings, to appoint and remove the other officers of the company (excepting the auditors and treasurer), and to hire and discharge clerks, servants, and other assistants.

Ten days' previous notice of every general meeting to be given by the directors to the several members, and such notice to mention the time and place of meeting, and the principal purpose for which it is convoked.	COPART- NERSHIP.
Any members may require a general meeting to be convoked within days after requisition in writing made for that purpose.	Company of Proprietors.
The directors to be allowed such annual sum for their trouble as shall be agreed upon at the first general meeting of the company after the commencement of the concern.	Notice of ge- neral meetings. Members may call meeting.
The directors to be allowed proper subordinate agents to act in the general management of the concerns of the company under given restrictions.	Allowance to directors.
The directors to choose members from their own body to be treasurers, in whose names all monies and securities for money shall be placed at the bankers of the company.	Subordinate agents.
All drafts or checks upon the bankers of the company to be drawn by the orders of the directors, signed by the treasurer, and countersigned or attested by the acting manager.	Treasurers.
The directors to meet once in every week upon the affairs of the company, one of whom shall preside as chairman.	Checks on Banker.
Any of the directors for the time being to be an effective body for the execution of the powers entrusted to them.	Weekly meet- ing of directors.
The last chairman of the directors, or any	Quorum of directors.
	Chairman of directors.

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NERSHIP.***Company of
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proceedings.****Property of the
company to be
vested in the
directors.**

of the members, to have power to summon a special meeting of the directors, as often as it shall be deemed expedient.

In all deliberations of the committee of directors the chairman to have a casting vote.

Minutes of all proceedings at general and other meetings to be entered in proper books, and signed by the chairman.

The estate and effects of the company to be vested in the directors as trustees thereof, who are to be authorised to make purchases, mortgages, and other contracts on behalf of the company, (but with the advice of the solicitor or counsel of the company); to collect and compound for all debts, rents, and other monies of the company; make allowances for taxes, &c. to give acquittances and discharges, and sign bankrupt certificates, invest surplus monies at interest, &c. at their discretion; to commence and defend actions and other legal proceedings against members and others, and to discontinue, compromise, or refer to arbitration the same, if the major part of the said directors, with the advice of the counsel or solicitor of the company, shall deem it expedient.

**Directors to
execute deeds.**

The directors, or any of them, to have power to sign and execute all deeds and other writings for the purpose of effectuating the purposes of the company, and their receipts to be sufficient discharges for all monies paid to them on behalf of the company.

Two auditors to be annually elected, at the general meeting in the said month of , out of such of the members possessing shares each as shall not be directors, to investigate the accounts of the company; and to be furnished by the directors and treasurers with all necessary papers and accounts for that purpose.

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Auditors.

In case default shall be made in payment of any balance due from the treasurers, the same upon nonpayment on demand to be forfeited with respect to such treasurers, and be a debt due to the other members only, and to be recoverable by the directors and newly elected treasurers, such treasurers to be liable to be excluded from all further interest in the capital stock.

Default of
treasurers.

A. B. &c. to be directors of the company until the first general meeting to be holden after the opening of the concern, and thenceforth until others shall be appointed in their stead. C. D. to be treasurer of the company during the same period. E. F. to be acting manager for the same period.

Appointment of
officers of the
company.

If the treasurer, auditors, or other principal agent, or any of the directors, die, resign, or become incapable to act, or shall improperly conduct himself, or shall cease to have the requisite interest in the capital stock, before the said month of in any year, the major part of the directors to have power to appoint others in their stead, subject to the approbation of the next general meeting.

Vacancy of
officers.

If the affairs of the company, in the opinion of the major part of the directors, be at any time in

Unsuccess of
the company.

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a doubtful state, a special general meeting to be called by them for the purpose of considering the measures to be adopted.

If it shall be judged expedient at any such meeting to make a further call upon the members in order to support the company, each member to be at liberty to withdraw from the company upon forfeiting his or her present interest in the same.

But no further call to be made, or any dissolution of the company to take place, until the same shall have been twice carried by a majority of three-fourths of the members present at some general meeting to be expressly holden for that purpose.

As to a dissolution of the company.

Upon the dissolution of the company by expiration of the copartnership term or otherwise, a general account and valuation to be made by the directors and auditors for the time being of the capital stock, debts, and effects of the company; and upon such account and valuation being approved at a general meeting, the same to be conclusive upon the members.

Upon any dissolution of the company, buildings and saleable property of the company to be sold, and the monies to arise by such sale, together with other the monies, debts, and effects of the company (after payment of just demands) to be divided amongst the several members according to their respective interests.

If the effects of the company shall appear upon such general account to be insufficient to answer the demands upon it, the several members to con-

tribute to supply such deficiency out of their private estate, in proportion to their respective estate and interests.

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A deed of settlement to be prepared as soon as may be, and by the advice of counsel, in order to establish the company for the purposes and according to the manifest intent and meaning hereof, or as nearly thereto as the rules of law and equity will permit.

Deed of settle-
ment to be pre-
pared.

If any doubt arise relative to the true construction of the provisions contained in the deed of settlement, or any subsisting rule or regulation of the company, a general meeting to be called for the purpose of expounding the same, at the requisition in writing of any three of the members, holding each one share, or any two of them holding two or more shares.

Doubts on the
construction of
the deed of
settlement, &c.

Any member to be at liberty to propose any question respecting the said deed, or other matter relating to the concerns of the company, at any general meeting, and the decision of a majority of three-fourths of the members then present to be final and conclusive upon the matter in question.

Doubts may be
suggested by
members.

All or any of the provisions and agreements in the said deed to be contained, or of the rules and regulations made or adopted by any committee of directors, to be varied or annulled at any general meeting (consisting of three-fourths of the whole number of members constituting the company) or at any general meeting expressly convoked or holden for that purpose, although a less proportion of the members shall be then present.

Deed may be
altered.

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*Deed to be open
to inspection.*

The said deed, and other the rules and regulations of the company, to be, at all seasonable times, open to the free inspection of each of the members, in the presence of a director or other superior officer. IN WITNESS, &c.

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CASES

On the Legality of the Establishment of unchartered Companies of Proprietors; with the Opinions of Mr. Serjeant Bailey, Mr. Serjeant Williams, Mr. Parke, Sir Vicary Gibbs, and the Author.

The Opinion of Mr. Serjeant Bayley.

THE vast and continued increase of the population and buildings of this metropolis having given rise to an idea that the establishment of a new office for the effecting of insurances upon lives and upon property would be generally advantageous to the community, a plan was suggested for those purposes by a gentleman well known for his philanthropic endeavours to promote other beneficial institutions, under the title of the Company, and which has since been carried into effect under the strongest testimonies of public approbation.

In contemplating a scheme for the ends proposed, it was deemed to be reasonable, that as the risk of insurance was now greatly diminished, as well by the recent improvements of the science of medicine as by the late acts for regulating the construction of buildings, the persons insuring should participate in the gains accruing from the capital derived from their own contributions, and also that their interests in the concern, for the purpose of being rendered capable of family arrangements, should be made transferable at pleasure, as now is and has been for many years past the practice in several offices of great respectability of a similar kind, and the utility of this privilege has been fully manifested by several of the proprietors having already expressed a desire to transfer their shares; but doubts have arisen whether such transfers can be legally made, in consequence of the restrictions supposed to be contained in the statute of 6 Geo. I. c. 18.

Your opinion is therefore desired, how far the legality of this establishment can be affected by the statute above cited, or any other law now in force, and in

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particular whether the several shareholders therein may with safety and in what manner proceed to make such transfers of their respective shares, as their convenience may require?

¶ “ In answering this case it is material to see what were the different projects to which the attention of the legislature were called when the 6 Geo. I. was passed, and what are the different provisions that act made. It appears by 19 Comm. Jour. 341, that twenty-two subscriptions had been opened, that the lowest sum to be subscribed was one million, that six of them were for fisheries, three for marine insurances, three for fire insurances, one for purchasing government securities and lending money on them, one for raising money to be employed in loans, one for granting annuities, one for raising Thames water in York Buildings, one for preventing and suppressing robberies by sea or land, one for building or buying ships to let on freight, one for bringing coals from Newcastle, one for furnishing funerals, one for carrying on trade to his majesty's German dominions, and one for raising the growth of raw silk: when the nature of these subscriptions were brought under the consideration of the House of Commons, they resolved that large subscriptions had been made to carry on public undertakings; that the subscribers had paid in small proportions of their subscriptions, though amounting in the whole to large sums; that the subscribers had acted without warrant as corporate bodies, and thereby drawn several persons into unwarrantable undertakings; and that the said practices manifestly tended to the prejudice of the public trade and commerce of the kingdom; and it was thereupon ordered, that a bill should be brought in to restrain the extravagant and unwarrantable practice of raising money by voluntary subscriptions for carrying on projects dangerous to the trade and the subjects of this kingdom. That part of 6 Geo. I. c. 18, which applies to this case was in consequence passed. It recites that several projects had been contrived since June, 1718, tending to the common grievance of great numbers of his majesty's subjects in their trade or commerce

and other affairs; that the contrivers opened books for public subscriptions and drew in many unwary persons to subscribe towards raising great sums, whereupon the subscribers paid small proportions thereof; that such projects related to fisheries and other affairs wherein the trade and welfare of many of his majesty's subjects were concerned; that in many cases the undertakers have presumed to act as bodies corporate, and to make their shares in stock transferable; that in some cases they have pretended to act under charters which were either granted for other purposes or obsolete; that other unwarrantable schemes had been and might be contrived, to the ruin of many of his majesty's subjects; and that it was become absolutely necessary that all public attempts tending to the common grievance of many of his majesty's subjects in their trade or commerce or other public affairs, and all public subscriptions, transfers, and other things, for furthering such undertakings, and more particularly the acting as a body corporate, the raising transferable stock, the transferring any share in such stock, without act of parliament or charter, and the acting under any charter which was either granted for other purposes or obsolete, shall be illegal and void. The act afterwards makes such undertakings, the receiving or paying subscriptions, the assigning shares, &c. public nuisances, and the offenders liable to pains and penalties. It also gives a remedy by action to any merchant or trader who shall suffer damage in his trade, commerce, or other lawful affairs, by any such undertakings, and imposes a penalty upon any broker who shall buy or sell any share or stock in any such undertaking. Upon this view of the mischiefs the legislature had in contemplation, and of the provisions it has made, I think it very doubtful what construction would be put upon the act; but I incline to think it would not extend to any undertaking, though established by public subscriptions, which did not tend to the common grievance of many individuals; but I incline to think it will make it illegal in any case to make transferable stock. I incline to think, therefore, that this establishment would be considered legal, because it has not in its nature any tend-

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ency to injure individuals, but I think it will be attended with risk to make the stock of the company transferable."

JOHN BAYLEY.

Temple, Dec. 2, 1807.

*Opinion given by the Author on the before-mentioned Case
and Opinion.*

"The moment of time given me to consider the act referred to, does not allow of my entering fully into the consideration of it, as bearing upon the undertaking in question; I must therefore request it may be deemed sufficient for me to say, that the above sentiments of Mr. Serjeant Bayley precisely accord with an opinion I gave upon the act on a similar inquiry being made previously to the institution of another company of a like nature—with this difference only, that conceiving the company to be legal, as not having a tendency to aggrieve any part of his majesty's subjects, I apprehended that it could not be rendered otherwise by the circumstance of the shares in such company being permitted to be transferred from one person to another—it appearing to me to be a contradiction to admit it to be lawful to possess an interest in a company, and at the same time to hold it to be unlawful to dispose of such interest, and that a derivative holder could not stand in any other predicament than that in which the original holder stood; the prohibitions of the act, I also thought, were expressly confined (in the words of the act) to "public subscriptions, *transfers*, and other things for furthering *such* undertakings." Hence I concluded that the clause which seems to forbid the transfer of shares *generally* and *indefinitely*, ought to be construed to refer to such institutions only as were "projects tending to the common grievance of great numbers of his majesty's subjects, in their trade or commerce, and other affairs:" and of this opinion, (but with great deference to that of

the learned gentleman whose opinion is now submitted to me) I profess that I still continue.(1)."

C. BARTON.

Carey-Street, Lincoln's-Inn,
Dec. 4, 1807.

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Opinion of Serjeant Williams on the before-mentioned Case.

"I am of opinion that this establishment falls within the eighteenth and nineteenth sections of the stat. 6 Geo. I. c. 18, and is therefore illegal. One of the mischiefs recited in the preamble of the eighteenth section of the statute is, that in many cases the undertakers or subscribers have presumed to act as if they were corporate bodies, and have pretended to make their shares in stock transferable or assignable, without any legal authority, either by act of parliament or by any charter from the crown, for so doing; and for the suppressing of this mischief, it enacts (amongst other things), "and more particularly the acting or presuming to act as a corporate body, the raising or pretending to raise transferable stock, the transferring or pretending to transfer or assign any share or shares in such stock, without legal authority, either by act of parliament or by any charter from the crown, to warrant such acting as a body corporate, or to raise such transferable stock, or to transfer shares therein, shall for ever be deemed to be illegal and void, and shall not be practised, or in any wise put in execution." I think it impossible for ingenuity to show that this company does not come within the before-mentioned words of the statute. By the articles of agreement for the institution of this company their capital stock is to consist of two millions sterling. This stock is to be divided into forty thousand shares or proportions of £50 each. Every member is to have a distinct interest in his share of this

(1) The distinctions taken in the above opinion and that of Mr. Serjeant Bayley, appear to be sanctioned by the case of *Brown v. Holt*, 4 Taunt. 587; but see also *ante*, Vol. III. p. 495.

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stock, and the shares are transferable by the shareholders, with the consent of the directors. Is not this a raising or pretending to raise a transferable stock? And it may be fairly added that this company are acting in the nature of a corporate body. It assumes the name of a corporation under the title of the Company. It is to be under the management of a chairman, deputy chairman, and twenty-four directors, who are to be appointed annually. The directors may make by laws, under certain restrictions, for the management of the company. The directors may purchase lands: the holders of shares are to have votes in the affairs of the company, with many other things of a similar nature, which are not necessary to be enumerated. Is not this an acting as a corporate body? It is certainly so to all intents and purposes. I do not see how a patent from the crown to incorporate this company could affect any thing more for them, except to give them a common seal. I am aware that the preceding words in the enacting clause of the eighteenth section, and the words in the subsequent section (nineteenth section), are, “and all other public undertakings and attempts, *tending to the common grievances, prejudice, and inconvenience* of his majesty’s subjects, or great numbers of them, in their trade, commerce, or other lawful affairs.” But I do not conceive that the legislature by these words intended that the legality or illegality of establishments of this nature should depend upon the event of their turning out to be beneficial to the public, or to be a grievance or prejudice to them, and therefore to be a question of fact to be left to a jury whether the particular institution in question be beneficial or prejudicial to the public; for I think that would be a strange construction of a remedial law which intended that undertakings of the sort described in the statute should never be practised in future. The mischief might be effected before the event of the institution could be known. It seems clear to me that these institutions must either be good or void in their original creation, and it cannot depend upon matters *ex post facto* whether they are to be legal or illegal; not, I think, that the legislature consider such institutions to be in their nature *tending to the common*

grievance of his majesty's subjects—for, according to my construction, all undertakings of every sort or kind, whatever may be the event of them, for the carrying on the ends of which a stock or capital is to be raised by further subscriptions of certain proportions or shares of such stock payable either immediately or by instalments, and which shares are transferable either at the pleasure of the holders or only with the consent of the directors of the company, without any legal authority by act of parliament or by charter from the crown, for so doing, are, by the eighteenth section of the act, declared *to tend to the common grievance, prejudice, and inconvenience of his majesty's subjects*, and deemed to be illegal and void, and by the nineteenth section are adjudged to be a public nuisance, punishable as such, and are also liable to so many of the penalties of the statute of *præmunire* as the court in its discretion shall think fit to inflict. It is taken for granted by the report in *Stent v. Bailis*, 2 P. Wms. 217, (and see *Rex v. Carpwood*, 2 Ld. Raym. 1361), that institutions of a similar nature with this are within this statute. The consequence is that, if I am right in my construction of the act, it would be a very imprudent and improper thing at present for members to make transfers of any of the shares of the stock.”

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NERSHIP.

Company of
Proprietors.

JOHN WILLIAMS.

Sergeant's-Inn, Dec. 4, 1807.

Opinion of Mr. Park on the before-mentioned Case.

“As a question upon this statute is now depending in the court of King's Bench, the decision of which may probably bear considerably on the present case, I should have been glad to postpone giving an opinion till that cause had received a judicial determination (1). As the matter stands, I conceive no counsel at the bar can be expected to give a

(1) I do not find any case, which came to a decision, about the time here referred to.

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precise opinion upon it; but looking at the act of parliament, and the circumstances of this case, I certainly am inclined at present to declare, that the case in question falls within the prohibition of the eighteenth section of the statute of 6 Geo. I. c. 18.

The objection to this construction seems to be, the usage that has prevailed of many most useful institutions having been established, apparently as much in violation of this act of parliament as the present Company is, and that no proceedings of a hostile nature have ever been taken against those institutions. To the first part of the objection I answer, if such companies are contrary to the injunctions of a positive law, no usage can avail—but the frequency and numbers rather call for a more steady execution of the law: to the second part I say, that although no prosecutions for near ninety years have been had under this statute, no act of parliament ever becomes obsolete by nonuser; all that the judges have to do is to construe the law as it is when the case is brought before them. As the case now stands, therefore, the utmost I can say is, that I cannot venture to assert that such establishments are legal, nor can I presume to advise any shareholder that he may safely proceed to make transfers of his stock in this company, the act having declared that all assignments and transfers “of such stock or stocks, share or shares in such stock (as are within the act) shall be deemed illegal and void.” This is the present inclination of my opinion, which receives some sanction from the frequent applications which have been made to parliament upon similar subjects; however, this act of the legislature will probably receive an authoritative construction in the course of the next month.”

J. A. PARK.

Lincoln's-Inn Fields, Dec. 3, 1807.

The Opinion of Sir Vicary Gibbs upon the Legality of establishing a Company of a similar Nature to the preceding.

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The most formidable objection to the proposed institution is, lest it falls within the prohibition of the 6th Geo. I. c. 18, and I cannot take upon myself to say that it does not; but so many societies of indisputable credit have within these late years been established, to which the same objection might have been raised, that there is fair reason to hope it either will not be urged, or will by some means or other be got over.

With respect to the remedies which the members of this society will have among themselves, the manner in which acts of peculation or mismanagement may be punished, and the like, they are all matters of detail, and must be provided against as well as may be by the rules under which the original members embark in this undertaking, and the terms on which they connect themselves together. The deed executed by the original adventurers should be laid before some gentleman of experience who has time to consider and settle it with care, for after it has been executed no further powers can be given without the unanimous consent of all the members.

It is to be observed, that with every care and foresight which can be exercised such a society must always be subject to great difficulties in the assertion of its rights, and in many other respects, from its not being, what it endeavours as much as possible to assimilate itself to, a corporate body.

V. GIBBS.

Lincoln's-Inn, Sept. 14, 1807.

N. B. No judicial decision has taken place on the legality of either of the companies above referred to (the one for insurances, and the other for supplying a town with water); but the courts have holden companies of a similar (though not of exactly the same) kind to be illegal, under the provisions of 6 Geo. I. see *ante*, Vol. III. p. 495, n. (1).

after mentioned (1). Now THIS INDENTURE WITNESSETH, that each of the said (*parties*) for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, to and with the other of them, and his executors and administrators, by these presents in the manner following, (that is to say) that they the said (*parties*) shall and will become and continue copartners and joint dealers in the trades or businesses of bookseller, publisher, and stationer, and in all things incident or customarily belonging thereto, for and during the term of years, to be computed from the day of and to be thenceforth next ensuing, if they the said (*parties*) shall so long live, and the said copartnership shall not be sooner determined in pursuance of the provisos hereinafter contained for that purpose. AND for the carrying on of the said joint trade, each of the said parties for himself, his heirs, executors, and administrators, doth also hereby covenant, declare, and agree to and with the other of them, that on or before the said day of next ensuing the date hereof, he and they respectively shall and will bring into the said joint trade in money, or in goods to be approved of by the other of them, the full sum or value of £ (2). AND it is hereby also mutually covenanted and

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NERSHIP.

Booksellers.

WITNESS,
agreement for
copartnership.

Capital.

Where business
to be carried on.

(1) If one of the parties be a new partner admitted into a subsisting copartnership, see *ante*, No. III. p. 14, n. (2), and *post*, p. 187. New partner.

(2) See other modes of bringing in or forming a capital, *ante*, pp. 20, 21, 22, 25, 110, 123. Capital.

COPART-
NERSHIP.Booksellers.Regulations as
to carrying it
on.Parties will be
faithful to each
other.Each party to
have an equal
share.

agreed by and between the said parties that the said trades or businesses shall be carried on and managed at _____, where the business of the said _____ is now carried on, unless and until they the said parties shall mutually hereafter agree to carry on the same elsewhere. AND for the due and orderly carrying on the said trades or businesses, it is further covenanted, concluded, and agreed upon by and between the said parties, and each of them doth for himself, his heirs, executors, and administrators, covenant, promise, declare, and agree to and with the other of them, his executors and administrators, by these presents, in the manner following, (that is to say) THAT they the said (*parties*) respectively shall and will be just, true, and faithful to each other in all their buyings, sellings, accounts, reckonings, disbursements, contracts, and dealings, in or concerning the said copartnership trades or businesses, and endeavour by all due care and diligence to advance and promote the same to the utmost of their respective powers (1). THAT the said (*one party*) his executors or administrators, shall have the full right and property in and to one moiety or equal half part of the joint stock of books, copies, and other things belonging to

Full form.

One party to
reside.One party may
be absent.(1) See fullest clause of this kind, *ante*, No. III. p. 39.If one party is to reside in the house, see *ante*, p. 37, n. (1), p. 112, and *post*, pp. 190, 191.If one party is to be excused attendance, see *ante*, *ib.* and *post*, p. 190.

the said copartnership; and also in and to the gains, profits, and increase which shall arise, happen, accrue, or be made thereby, or by the ordering or employing of the same, or by any credit or business to be by them managed or done as copartners aforesaid, and shall bear and pay one moiety or equal half part of all losses, charges, costs, expenses, and damages, which shall at any time happen, or arise to, or be expended, or laid out, in, about, or concerning the said joint trade or copartnership, in any wise whatsoever; and that the said (*other party*) his executors, or administrators, shall have the like right, and property in and to the other moiety or equal half part of the said joint stock of books, copies, and other things belonging to the said copartnership, and also in and to the gains, profits, and increase which shall arise, happen, accrue, or be made thereby, or by the ordering or employing of the same, or by any credit or business to be by them managed or done as such copartners, and also bear and pay one moiety or equal half part of all losses, charges, costs, expenses, and damages, which shall at any time happen, or arise to, or be expended, or laid out, in, about, or concerning the same joint trade or copartnership in any wise whatsoever (1). THAT the said joint stock, and also the buyings, sellings, exchanging of books, dealings, gains, debts, and credits, which shall

COPART-
NERSHIP.

Booksellers.

Entries to be
made of the
sales and other
transactions of
the trade.

(1) If the shares of the parties are not to be equal, see *ante*, Unequal shares. p. 124, and *post*, p. 186.

COPART-
NERSHIP.

Booksellers.

Usual pro-
visions.Neither party
to publish, &c.
without consent
of the other.

Usual clauses.

Exception.

grow, arise, happen, or be made of or by means of the said joint trade, or any thing incident or belonging thereto, shall from time to time, during the said copartnership, be truly entered and fairly written in some convenient and proper books to be kept for that purpose within the shop or place wherein the said trade shall be carried on, in such manner as persons of the same trade usually do or ought to do, and of which said books the said parties respectively, and their respective executors or administrators, shall freely at all times, as well during the continuance, as after the expiration of the said copartnership, until the whole concerns thereof be wound up, have the sight and perusal, with liberty to transcribe and copy out or make extracts from all or any part thereof without any let, hinderance, or denial. AND also that, &c. &c. (*Insert provisions as to subsistence-money ;—hiring servants ;—taking accounts ;—keeping apprentices ;—giving credit ;—becoming bail, and other usual clauses*) (1). AND that no new translation of any book or copy shall be ordered, nor any copyright, edition, or impression of any book be purchased or agreed for, nor any subscription to or for any book or books, be made by either of the said parties, without the consent of the other of them, except, &c. (2). AND it is further agreed,

(1) See No. III. *ante*, p. 29 to 58, in the margins and variations ; also (as to apprentices) *post*, p. 192.

(2) If either party have a copyright or the like, or exercise a particular branch of the business, which it has been agreed he shall retain the exclusive benefit of, it may here be excepted, and see *post*, p. 194.

that the copies or books which shall be printed during the continuance of the said copartnership shall be for the benefit of and brought into the said joint stock; AND that in case the said parties shall not agree as to the number of copies to be printed, or the prices of sale thereof, or as to any other matter relating thereto, the same shall be determined by , , and , citizens and booksellers of London, who (or any two of them) are hereby authorised to determine the same, and their determination shall be conclusive upon the said parties, and each of them shall be compelled to perform the same by a rule of his Majesty's court of King's Bench at Westminster, pursuant to the statute made and provided in that behalf. THAT if either of the said parties shall die during the continuance of the said copartnership, no benefit of survivorship shall accrue unto or be had or taken by the survivor of them in any wise whatsoever, any law, usage, or custom, or any thing herein contained to the contrary notwithstanding; but one moiety or equal half part of the ready money, stock, and effects of the said copartnership, and the proceeds thereof, shall go and belong to the executors or administrators of the deceased party, or to such other person or persons as he shall direct, and the other moiety thereof to the survivor of them (1). AND if any

COPART-
NERSHIP.

Booksellers.

Disagreement
as to books to
be referred to
particular
persons.

No survivorship.

(1) See fuller forms of this proviso and of the subsequent clause, with variations suited to the different agreements of parties, *ante*, No. III. p. 58 to 65, p. 83, rider (A), and p. 137; also *post*, p. 196, n: (1). Death of
parties.

COPART-
NERSHIP.

Booksellers.

Stock to be
valued.

Reciprocal co-
venants to pay
each other his
share.

Expiration of
partnership.

debts shall be owing by the said parties upon their said joint account, the surviving partner shall, out of the money in hand, or other money, as soon as the same shall come in, duly satisfy and pay the same. AND that after all debts shall be paid, such survivor shall forthwith pay to the executors or administrators of the deceased party so much money as the part, or share, or dividend of the stock in trade of such deceased partner shall amount unto, upon a valuation to be made of the said stock by two indifferent persons of the same trade. AND the said (*one party*) doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said (*other party*), his executors and administrators, that he the said (*first party*), in case he shall survive the said (*other party*) his executors or administrators, shall and will well and truly pay one moiety of the said debts, and save and keep harmless the said (*other party*), his executors or administrators, of and from the same. AND the said (*second party*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said (*other party*), his executors and administrators, that he the said (*second party*), in case he shall survive the said (*other party*) his executors and administrators, shall and will well and truly pay the other moiety thereof, and save and keep harmless him the said (*other party*), his executors and administrators, of and from the same. AND further that, &c. (*Add stipulations as to division of stock, &c. in case of a*

dissolution or the expiration of the copartnership (1).

AND it is lastly agreed, that if any doubt, question, controversy, or difference shall arise between the said parties, on any matter or thing relating to the said copartnership, then and as often as any such doubt, question, controversy, or difference shall arise or happen, the same shall be referred to the determination of the said , , and , (if they shall be then living); and in case of the death of either of them, then to two indifferent persons to be nominated and chosen from time to time by the parties to these presents, within ten days next after the same shall arise or happen (each of the said parties choosing one) or else by an umpire to be nominated by the persons so to be chosen in case they cannot agree, and that each of the said parties to these presents, and their respective executors or administrators, shall stand to, abide, perform, and keep such order and determination therein as the said and , or the said two indifferent persons or umpire so to be chosen as aforesaid shall make or direct, so as such order and determination be made in writing under the hands and seals of the said and , or of the said two indifferent persons, or of the said umpire, within ten days next after such doubt, question, controversy, or difference shall be re-

COPART-
NERSHIP.

Booksellers.

General dif-
ferences to be
referred to two
persons.

(1) See *ante*, No. III. p. 66, *et seq.* p. 87, rider (B), pp. 116, 140, 143; also *post*, No. XIII. p. 204, *et seq.*

Expiration of
term, &c.

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NERSHIP.****Booksellers.**

ferred to them or him, and each of them the said parties, shall be compelled to perform the same by such rule of court as hereinbefore is mentioned (1). IN WITNESS, &c.

Reference of
disputes.

(1) See other modes and forms of reference of disputes, *ante*, pp. 71, 72, 104, 148.

Additional
clauses.

Should other provisions besides those contained or referred to in the above precedent be requisite to meet the objects of the parties, they will (if at all of a usual kind) be found by looking over the marginal notes of No. III. *ante*, p. 13, *et seq.*

COPART-
NERSHIP.Apothecaries.

No. X.

A Deed of Copartnership between Surgeons and Apothecaries—one Party being already established in Practice, and taking in an Assistant Partner.

Variations as below (1).

THIS INDENTURE, made the day of ,
in the year of the reign, &c. and in the year
of our Lord . BETWEEN (*the original party*)
of, &c. surgeon and apothecary, of the one part,
and (*the coming in party*) of, &c. surgeon, apothecary, and practising accoucheur, of the other part.

WHEREAS the said (*first named party*) hath, by
many years study, assiduity, and diligence, ac-
quired a very extensive and beneficial practice in
the town of and its neighbourhood, in the
professions of surgeon and apothecary. AND
whereas in consideration of the high opinion and
confidence which the said (*parties*) entertain of,
and repose in, each other, they have agreed to be-
come copartners in the said professions, and also
in the profession of accoucheur carried on by the

Recital of
agreement for a
copartnership.

(1) See also notes and variations to No. III. *ante*, p. 13, in margins.

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NERSHIP.

Apothecaries.

WITNESS.

Parties become
copartners.

said (*coming in partner*), upon the terms and conditions hereinafter expressed. Now THIS INDENTURE WITNESSETH, that each of the said parties hereto, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the other of them, his executors and administrators, in the manner following (that is to say) that from and after the day of the date of these presents, they the said (*parties*) shall and will become and continue copartners and joint practitioners in the professions or businesses of surgeon, apothecary, and accoucheur, and in buying and selling drugs and medicines, giving advice and attendance, and all other matters and things incident to the same, for the term of years, if they shall so long live, and these presents shall not be sooner determined under the provisions hereinafter contained. AND for the more effectually carrying on the said professions, they the said parties have mutually agreed, that one part of the stock of drugs, medicines, fixtures, implements, and utensils, in the shop and laboratory, which are the entire property of the said (*original party*) and are enumerated or set forth in an inventory or particulars at the foot hereof, and signed by each of the said parties, shall be purchased by the said (*second party*). AND that the said stock, and all the profits and interest of the said partnership business, and all losses attending the same, shall be, from time to time, during the continuance of this copartnership, divided into equal parts,

A moiety of the
stock to be pur-
chased by the
incoming party.

Profits, &c. to
be divided.

parts whereof the said (*first party*) his executors and administrators, shall be entitled to, and have and receive, and shall and will bear and pay

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Apothecaries.

parts (the whole into equal parts to be divided) of all debts and losses which shall from time to time be incurred by, or happen in or to the said partnership business. AND that the said (*second party*) his executors and administrators, shall be entitled to have and receive the remaining one part of the said joint stock, and the interest and profits thereof, and shall and will bear and pay one like part of such debts and losses as aforesaid. AND THIS INDENTURE FURTHER

FURTHER
WITNESS.
Assignment of
stock, &c.

WITNESSETH, that for and in consideration of the sum of £ pounds of lawful money of Great Britain to him the said (*first party*) in hand well and truly paid by the said (*second party*) at or before the sealing and delivery of these presents, (being one part of the appraised value of the stock of drugs, medicines, and other things in the said inventory mentioned), the receipt whereof the said (*first party*) doth hereby acknowledge, and thereof and of and from every part thereof, doth acquit, exonerate, release, and for ever discharge the said (*other party*) his executors and administrators, by these presents, HE the said (*first party*) hath bargained, sold, and assigned, and by these presents doth bargain, sell, and assign unto the said (*second party*), ALL that one part (the whole into equal parts being considered as divided) of and in all the drugs, medicines, fix-

COPART-
NEERSHIP.Apothecaries.

FURTHER
WITNESS.
Mutual agree-
ment as to
carrying on the
business, &c.

Coming in party
to reside.

Original party
to have in-
dulgence.

tures in the shop, laboratory, instruments, utensils, and other things of the said (*first party*) as the same are, or are intended to be more particularly mentioned and set forth in the inventory or particular thereof, at the foot of these presents, signed by them the said parties, To HAVE, hold, receive and take, all and singular the said one.

part of and in the said premises hereby bargained, sold, and assigned, or otherwise assured or intended so to be, unto the said (*second party*) his executors, administrators, and assigns, as his and their own proper goods and chattels, absolutely and for ever. AND THIS INDENTURE FURTHER

WITNESSETH, that it is also agreed between the said parties to these presents, that the said joint business shall, during the continuance of this copartnership, be carried on and exercised in the shop belonging to the dwelling-house of him the said (*first party*) in street aforesaid, or in such other shop or house within the said parish of

, as he the said (*first party*) shall at any time think fit. AND that he the said (*second party*) shall constantly reside in or near the said house, or wherever else the business of the said copartnership shall happen to be carried on or exercised, and shall and will give close and constant attention, industry, and attendance therein; but that the said (*first party*) shall and may be at liberty to reside in town, or in the country, and to give such attendance and application only as shall be agreeable and convenient to him in that

respect. AND that the annual sum of £ shall be allowed to the said (*first party*), and he is hereby authorised to deduct or retain the same out of the profits arising from the business of the said copartnership, for the rent of the shop, parlour, laboratory, still-house, and other parts of the said house of the said (*first party*) which are to be made use of for the carrying on the said joint business, and also the rent or rents of any other house or warehouse which shall be taken and hired at any time or times hereafter during the said copartnership, for carrying on the said business, together with all taxes, repairs, and charges, attending the same. AND also that chaldrons of coals per annum for the use of the shop, parlour, laboratory, and stills, and a sufficient supply of drugs, and all servants' wages, lamps, and candles, and all other petty expenses incident or necessary to the carrying on the said business, shall from time to time be paid for and discharged out of the profits arising therefrom. AND it is further agreed between the said parties, that the said (*first party*) shall have the sole power, management, and direction, in and about hiring and discharging the journeymen or servants to be employed in carrying on the said business, and of giving or allowing them such wages, and entering into such contracts with them as he shall from time to time judge convenient and proper. AND that the said (*first party*) shall have full licence, liberty, and power, to charge the profits of the said business with the payment for, and

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NERSHIP.

Apothecaries.

Allowance for
rent, &c.Petty expenses
to be borne by
both parties.One party to
hire servants,
&c.and to charge
the business
with expenses
of a chariot.

COPART-
NERSHIP.

Apothecaries.

Agreement as
to apprentices,
&c.

expenses of the hire of, a chariot, coachman, and pair of horses, during such part of the year as he shall think proper to make use of the same in visiting patients and others, on account of the said copartnership, after the rate of £ by the year. AND it is further agreed, by and between the said parties, that all apprentices, journeymen, and servants, to be employed in and about the said joint business, shall be provided with proper and sufficient board and lodging by the said (*second party*), and that he the said (*same party*) shall, during the continuance of this copartnership, be paid and allowed, out of the said copartnership stock and the profits thereof, for the board and lodging of each of such apprentice, journeyman, and servant, after the rate of £ per annum, and after the rate of £ for the board and lodging of every porter or servant, and which said several last mentioned sums or annual allowances he the said (*second party*) shall and may lawfully, in every year, take out of the said joint stock, and the profits thereof, by equal quarterly payments. AND the said (*first party*) agrees to undertake to provide such board and lodging, under the terms and conditions, and for the persons aforesaid, whenever the said (*second party*) shall think fit or desire to discontinue the same, on his giving at least one week's notice of such his desire to the said (*second party*). AND it is hereby further agreed, by and between the said parties to these presents, THAT, &c. (*books of account to be kept, parties will be faithful to*

Books of ac-
count.

each other, &c.) (1). AND that it shall be lawful for the said (*second party*) to have the care and custody of the money arising from the sale of drugs, payment of bills, or otherwise, from or on account of the said partnership business (he paying thereout all necessary bills, charges, or expenses, due from or relating thereto) until the time of settlement or annual division of profit and loss hereinafter mentioned. AND also THAT, &c. [Copartnership estate to be protected from private debt; allowance for subsistence-money, &c. (2)]. AND it is further agreed, by and between the parties to these presents, THAT (*Annual accounts to be made out, &c.*) (3). AND it is also agreed, that upon the balancing and settling such annual account, the neat profits appearing to be gained by the said copartnership stock, and by the said business or profession, shall be divided between the said parties in proportion to their respective shares in the same, by virtue of these presents, (that is to say) parts thereof shall be had and received by the said (*first party*) and the remaining part shall be had and received by the said (*second party*). PROVIDED ALWAYS, and it is further agreed, that it shall be lawful for each of the said parties respectively, and he is hereby authorised to retain and keep to his own separate

COPART-
NERSHIP.Apothecaries.One party to
keep the cash.

Usual clauses.

Profits to be
divided.Each party to
retain presents,
&c.(1) See these clauses, *ante*, No. III. pp. 23. 38. 96.(2) See *ante*, *ib.* p. 43, *et seq.* and 96.(3) See *ante*, pp. 35. 95.

**COPART-
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Apothecaries.

One party to
have certain
profits ex-
clusively.

Parties not to
assign without
consent.

use, all fees or gratuities and presents made or given to him over and above the charge made for the business or attendance, for or in respect of which such fees, gratuities, or presents, were made or given to him, without bringing the same to the account of, or entering the same in the books of, the said copartnership. PROVIDED ALSO, and it is hereby further agreed, by and between the said parties, that notwithstanding these presents and the copartnership hereby established, it shall be lawful for the said (*one party*) to have, retain, possess, and enjoy, to and for his own separate and exclusive use and emolument, all and singular the fees, profit, gratuities, and advantage whatsoever, which shall or may accrue or arise from the practice or profession of an accoucheur, save and except, nevertheless, the profit which may arise from the administering of medicines and drugs, and applications to the patients, in that practice or professional department, or consequent therefrom; which medicines, drugs, and applications, shall be found and provided out of the joint stock, and at the expense of the said copartnership, and the profits arising by the sale or administering thereof shall go and accrue to the said copartnership estate, and shall be divided between the said parties in the like manner and proportions as other the profits to be derived from the said copartnership business. AND that neither of the said parties (except as hereinafter provided) shall, without the consent of the other of them in writing first obtained, assign or make

over his interest in the said copartnership to any other person or persons whatsoever. AND that if either of the said parties shall die during the said copartnership, no benefit of survivorship shall accrue unto, or be had or taken to or by the survivor of them, as to the stock or effects of or belonging to the said copartnership, but only as to the professional practice, business, or good-will thereof (1). AND it is also further covenanted and agreed, by and between the said parties, that if at any time during the said term of years either of them shall be necessitated to quit the said business or profession on account of a bad state of health, or any other calamity or cause, the other of the said parties, his executors or administrators, shall and will, within the space of calendar months next thereafter, pay, or cause to be paid, unto him who shall be so incapacitated, the full appraised value of the stock which shall be then belonging to him, of or in the said copartnership, and of the money then in hand, after deducting the several debts which shall be due and owing from the said copartnership; and that all debts which shall be then outstanding and due to the said copartnership shall be from time to time shared and divided according to the share

COPART-
NERSHIP.

Apothecaries.

No survivor-
ship.In case of inca-
pacity of either
party, the other
to take his share
of stock, &c.

(1) See, as to survivorship and goodwill, *ante*, No. III. p. 24, n. (1), and p. 25, notes. Death, &c.

See other provisions as to division of stock, &c. on the death or retirement of either of the parties, *ante*, No. III. p. 58, *et seq.* p. 83, rider (A), and p. 137.

COPART-
NERSHIP.

Apothecaries.

Retiring party
not afterwards
to practise.

If a daughter
of either party
marry to one of
the same pro-
fession, he may
be admitted a
copartner.

If original part-
ner dispose of
his share, the
other to have
the preference.

and proportion of such party therein, when and so soon as the same can be gotten in and received. And the party so incapacitated, his executors or administrators, shall and will, at the costs and charges of the continuing party, his executors, administrators, and assigns, assign and make over to him and them all his part or share of and in the said joint stock, and all his benefit, property, and claim therein and thereto. PROVIDED ALWAYS, that in case of the retirement of such party for any such cause as aforesaid, the party so retiring shall and will duly enter into and execute a proper bond to the continuing party, not to practise as, or carry on the business of a surgeon, apothecary, or accoucheur, at any time during the then residue of the term of the said copartnership, within the town of _____, or within the distance of _____ miles therefrom. AND it is further agreed by and between the said parties, that in case either of the daughters of the said (*first party*) (*or other party as agreed*) shall happen to marry a surgeon or apothecary, he the said (*same party*) shall be at liberty, and have full power to introduce such person as a partner in the said business or profession, and to grant and assign to him the part or share of him the said (*same party*) of and in the said joint stock and business, or such part thereof as he shall think proper, under and subject to the terms and conditions herein contained on the part of the said (*same party*) and without prejudice to the interest of the said (*other party*). AND it is hereby further agreed, that if

the said (*first party*) shall be desirous to dispose of his part or share of the said profession or business, the said (*second party*) shall have the preference or refusal thereof, on the terms following (that is to say) upon paying to the said (*first party*) the full value of his part or share of the stock of medicines, drugs, and other things then belonging to the said copartnership, at a price to be ascertained and fixed by two indifferent and competent persons, to be named by the said parties respectively, as in the case of reference to arbitration, and also paying to the said (*first party*) years purchase of the profits of his said part or share, to be calculated by the average amount of the clear profits thereof for the three last preceding years; and if the said (*second party*) shall neglect to complete the purchase of such part or share on the said terms and conditions, the said (*first party*) shall be at liberty to dispose thereof to any other person regularly brought up to the profession or business of a surgeon and apothecary, who shall agree to take the same, and to become a partner with the said (*second party*) upon such of the terms of these presents as respects the (*first party*). AND the said (*second party*) doth, for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said (*first party*) his executors and administrators, in the manner following (that is to say) that in case the said (*first party*) shall at any time during the said term of years be inclined to quit, and shall accordingly quit the

COPART-
NERSHIP.

Apothecaries.

If original partner quit or die, the other partner to account for his share of the profits.

COPART-
NERSHIP.

Apothecaries.

said business or profession, he the said (*second party*) shall and will, from time to time, account with and pay to the said (*first party*) the net profits of his said part or share of the said business or profession, during the then remainder of the said term of years, if he the said (*same party*) shall so long live, at or upon the said days or times of settlement of the said copartnership accounts; and in case of the death of him the said (*first party*) during the said term, then that he the said (*second party*) shall and will from thenceforth well and truly pay to, and account with the executors or administrators of the said (*first party*) for the said net profits of the business or profession during the said term or period (1). And, &c. (*Add*

Annuity to be paid to retiring party, or representative of deceased party.

(1) If the continuing partner is to pay an annuity to the outgoing partner, say,

“AND that in case at any time within the first years of the said copartnership, the said (*first party*) shall choose to retire from, and give up to the said (*second party*) his share in the said copartnership, it shall be lawful for him so to do, and to determine the present copartnership; and then and in such case the said (*second party*) doth, for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said (*first party*) his executors and administrators, that he the said (*second party*) shall and will, from time to time, during the joint natural lives of him the said (*first party*) and the said (*second party*), pay, or cause to be paid, to the said (*first party*) or his assigns, one annuity or yearly sum of £ , clear of all deductions whatsoever, by even quarterly payments in each year, and shall and will enter into and execute unto the said (*first party*) a bond, in a sufficient penalty, for the payment

clause of reference to arbitration in case of difference, &c.) (1). IN WITNESS, &c.

COPART-
NERSHIP.

Apothecaries.

thereof, and a warrant of attorney to confess a judgment on the said bond; and that then and in such case also the said (*second party*) his executors and administrators, shall and will pay, or cause to be paid, to the said (*first party*) his executors, administrators, and assigns, a moiety of the amount of, or value of, the fixtures and stock in trade, at which the same shall then be valued and appraised by two indifferent persons, one to be named by each of the said parties, in the usual way."

(1) See *ante*, pp. 72. 104.

Arbitration.

Should the above precedent not contain all the particular provisions required by the parties, they will probably be found by looking over the marginal notes of No. III. *ante*, p. 13, *et seq.* most of which may be equally applied to a professional as to a mercantile pursuit.

Additional
clauses.

COPART-
NERSHIP.

Attornies.

No. XI.

Deed of Copartnership between Attornies.

Variations as in margins below (1).

Recital of
established
business, and
agreement to
admit a partner.

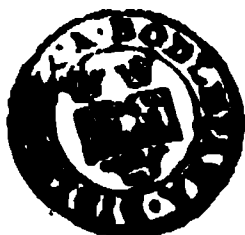
THIS INDENTURE, made the day of , in
the year, &c. and in the year of our Lord .
BETWEEN (*one party*) of, &c. an attorney of his
majesty's court of King's Bench, at Westminster,
and also a solicitor of, or practising in, the high
court of Chancery, of the one part, and (*other
party*) an attorney of his majesty's said court of
King's Bench, and also of his majesty's court of
Common Pleas at Westminster, of the other part.
WHEREAS (2) the said (*first party*) has, for many
years past, practised as an attorney and solicitor,
and also in the conveyancing department of the
law, at , AND WHEREAS, by reason of the
confidence he hath in the integrity and abilities

Variations, &c.

(1) See also variations and notes to No. III. *ante*, p. 13, *et seq.* in margins—most of them being as applicable to a professional as to a mercantile pursuit. See also p. 14, n. (2).

Prior agree-
ment.

(2) If the deed of copartnership be entered into in pursuance of a previous agreement in writing, it may be here recited—but such recital is not essential; see *ante*, p. 14, n. (2).



of the said (*second party*) and for the considerations hereafter mentioned, he hath agreed to admit him as a copartner in the said professions or businesses, in the proportions, for the period, and subject to the provisos and agreements hereinafter contained. Now THESE PRESENTS WITNESS, that in pursuance of the said agreement, and in consideration, &c. (1) he the said (*first party*) for himself (2), his heirs, executors, and administrators, doth hereby covenant, declare, and agree, with and to the said (*second party*) his executors and administrators; and the said (*second party*) for himself, his heirs, executors, and administrators, doth hereby covenant, declare, and agree, with and to the said (*first party*) his executors and administrators, in the manner following (that is to say),

COPART-
NERSHIP.

Attornies.

WITNESS,
mutual cove-
nants of copart-
nership

THAT they the said parties shall and will become and continue and be copartners together in profit and loss, (in the proportions hereinafter mentioned) of or in the said business or profession of an attorney and solicitor; for commencing, carrying on, prosecuting, and defending actions, suits, and proceedings in law, equity, bankruptcies, insolvencies, and otherwise; and also of or in the practice of conveyancing, in or for perusing,

in certain pro-
portions.

(1) If a capital is to be brought in by the parties or either of them, see *ante*, p. 20, n. (2), p. 22, n. (2), p. 25, n. (1), and pp. 109. 123. 129. 152.

(2) If there be several copartners, see *ante*, p. 18, n. (1) and Several partners. (2).

copartnership shall be carried on at the present or other dwelling-house of him the said (*first party*) he the said (*first party*) shall be paid and allowed, yearly and every year, at and after the rate of £ per annum, for or towards the rent and taxes of the office, and of such part of the dwelling-house as shall be usually employed in or upon account of the copartnership business, and for coals, candles, attendance of servants, and the casual entertainment of clients and other expenses incident thereto (1).

COPART-
NERSHIP.Attornies.

THAT all deeds, evidences, and writings, papers, vouchers, and documents, in or concerning any actions, suits, causes, or other proceedings, matters, or things, relating to the affairs of clients, shall at all times during the said copartnership remain in the office where the said business shall be carried on, and be at all times open to the free inspection and perusal of both the said parties.

Papers, &c. to
be kept in the
office.

THAT neither of the said parties shall or will at any time during the said copartnership enter into or make any promise or undertaking to appear and put in bail to the sheriff, or to put in or perfect bail above, or otherwise make himself responsible in any wise howsoever for the debt of any client or other person; nor institute or commence any action, suit, or proceeding in any court of law or equity; nor take any journey beyond miles for or on the business of any client

Neither to bail,¹
&c. without
consent.

(1) See a different form, *ante*, p. 37, n. (1), p. 38, n. (1), and p. 112.

**COPART-
NERSHIP.**

Attornies.

Each party to
bear loss of his
own acts.

Account to be
kept of business
done.

Usual clauses.

Neither party
to prosecute on
his own sepa-
rate account.

without the privity and consent of the other of the said parties.

THAT if either of the said parties shall pay or advance, or make himself liable for the payment or advancement of any sum of money to or for any person or persons, exceeding the sum of £ , without such consent as aforesaid, the party so paying, advancing, or making himself liable, shall alone stand to and bear the loss, risk, and hazard thereof, and the share or proportion of such party shall be charged therewith.

THAT true and full entries shall be made from time to time by the said parties of all monies received and paid, letters written and received, attendances and conferences upon or with clients and others, and all other transactions and affairs had or managed by them respectively in or concerning actions, suits, causes, and other proceedings, matters, and things whatsoever relative to the said businesses or profession, in proper books to be kept for that purpose.

THAT, &c. (*Add other usual clauses*) (1).

THAT neither of them the said parties shall or will, at any time during the said copartnership, carry on, prosecute, or defend any action or suit at law or in equity, or transact or do any agency or other business incident or belonging to the profession of an attorney, solicitor, or conveyancer, for any profit or advantage on his own separate

Usual clauses.

(1) See usual clauses of fidelity, &c. &c. &c. *ante*, pp. 26, *et seq.* and pp. 92, *et seq.*

account, or in any other manner than for the joint benefit of the said (*parties*) in the proportions hereinbefore mentioned.

COPART-
NERSHIP.

Attornies.

THAT all debts contracted or incurred on account of the said copartnership, and all losses to be sustained by reason thereof, and all salaries and wages of clerks, and other payments, and necessary expenses, which shall be occasioned on account of the said copartnership (except as hereinbefore is mentioned), shall be sustained and borne by them the said parties respectively, and their respective executors and administrators, in the proportions aforesaid.

Losses, &c. to be
equally borne.

THAT all and every sum and sums of money which shall be received by either of the said parties on account of the said copartnership business, or for fees, rewards, or gratuities, shall, from time to time, be deposited and remain in the hands of the said (*first party*) (*or as agreed*) in trust for the joint use and benefit of both the said parties, according to their aforesaid respective interests; and that he the said (*same party*) shall and will out of the said monies pay to and supply the said (*other party*) with all such sum and sums of money as shall from time to time be necessary or expedient for stamps, fees to counsel, or otherwise for the carrying on the said business, or which shall be reasonably expended on account thereof (1).

Money to be
kept by one
party.

(1) See a different form, *ante*, p. 127.

**COPART-
NERSHIP.**

Attornies.

**Annual accounts
of profits, &c.**

THAT the said parties shall and will, yearly, during the said copartnership, (*account together for profit and loss*) (1). AND that upon stating and finishing every such account, they the said parties will use their joint and respective endeavours to recover, collect in, and receive, all and every such sum and sums of money as shall appear to be due and owing to them, on account of the said joint profession or business; and after payment and deduction of all sums of money due and owing from the said copartnership, and of such sums as are hereinbefore agreed to be retained for subsistence-money as aforesaid, they the said parties shall make a partition and division between them of the clear gains and profits of the said copartnership business, according to the shares and proportions hereinbefore mentioned.

Special clauses.

THAT, &c. (*special clauses*) (2).

Special clauses.

(1) See *ante*, pp. 35. 95.

(2) Add such special clauses as have been agreed upon between the parties, for the forms of which (*mutatis mutandis*) see

As to articulated clerks, *ante*, p. 30, n. (1), and p. 114.

As to writing clerks, *ante*, p. 38, n. (1), p. 45, n. (1), and p. 135.

As to attendance by one partner, *ante*, p. 37, n. (1), p. 39, n. (1), and p. 113.

As to expenditures on clients, *ante*, p. 42, n. (1).

As to disposal of copartnership interest, *ante*, p. 50, n. (1), p. 196.

As to introducing a new partner, *ante*, p. 51, n. (1), pp. 154. 196.

As to liberty for partner to retire or dissolve on notice, &c. *ibid.* p. 57, n. (1), pp. 140. 155. 197.

COPART-
NERSHIP.Attornies.Death of either
party.

THAT in case of the death (1) of either of the said parties, the survivor of them shall and will, as soon as conveniently may be thereafter, adjust and make up a true and just account and reckoning, in writing, of all matters and transactions relating to the said copartnership, and of all debts due and owing by or to the said copartnership, and within six calendar months next after the decease of the party so dying, deliver, or cause to be delivered, unto his executors or administrators, a true copy and state of such account and reckoning, and shall and will get in and receive, as soon as conveniently can be, all debts and sums of money owing to the said copartnership, and well and truly pay, or cause to be paid, unto the executors or administrators of the party so dying, his due share and proportion of such sum and sums of money as shall be then in hand (after deducting all sums of money owing from the said copartnership), and of the debts and sums then outstanding, as and when the same shall from time to time be gotten in and received.

AND further, (*add agreement as to dissolution of* Expiration of
copartnership.

As to either party retaining gratuities, *ante*, p. 193.

One party having the profits of certain branch of the business exclusively, *ante*, p. 194. Special clauses.

As to incapacity of either party, *ante*, p. 195.

Annuity to be paid to a partner on his retiring, *ante*, p. 198.

(1) See other provisions in case of the death of either party, *ante*, No. III. p. 58, *et seq.*, p. 83, rider (A), for full forms, and p. 100, *et seq.* for shorter forms, and pp. 137. 154. 195, n. (1), and p. 197. Death of
partner.

**COPART-
NERSHIP.**

Attornies.

the copartnership, division of profits, &c. at the expiration of the term (1). AND that all papers, vouchers, and other documents in or relative to any cause or proceedings then carrying on or pending, and all drafts and copies of deeds and writings belonging or relative to the concerns of any client or clients of the said parties shall be (*Add agreement as to papers, &c. being delivered up to the party who shall continue to be the attorney of the clients, or otherwise, as may be agreed*).

AND it is hereby further covenanted and agreed, that, &c. (*further assurance*) (2).

AND LASTLY, that, &c. (*Clause referring differences to arbitration*) (3). IN WITNESS, &c.

Dissolution.

(1) See *ante*, No. III. p. 57, n. (1), p. 66, *et seq.* p. 87, rider (B), p. 101, *et seq.* pp. 116. 119. 141. 157. 197 ; also *post*, No. XIII.

**Further assur-
ance.**

(2) Add clause for amending the articles, if found defective, as *ante*, pp. 71. 103: 146.

**Reference of
differences.**

(3) See *ante*, p. 72 (full form), p. 104 (shorter form), and p. 148.

**Additional or
varied clauses.**

Many additional and varied clauses and provisions, equally applicable to the profession of an attorney and solicitor as to copartnerships in general, will be found by referring to No. III. (p. 13, *et seq.*) in the margins ; see also the marginal notes to No. X. (p. 187).

COPART-
NERSHIP.

Renewal
of expiring
Copartnership.

No. XII.

A Continuance or Renewal of an expiring Copart-
nership (1).

Variations *where by separate Deed and where by In-
dorsement.*

KNOW ALL MEN BY THESE PRESENTS, THAT
WHEREAS the within-mentioned copartnership, be-
tween the within-named (*copartners*), will, by
virtue of the within-written indenture, expire and
determine on the day of next en-
suing the date of these presents. AND WHEREAS
the said parties have agreed to renew and con-
tinue the said copartnership for a further term of
 years, to be computed from the said
day of (2). NOW THESE PRESENTS WIT-

WITNESS, the
parties agree to
renew the co-
partnership for
a further term.
Continuance of
copartnership
should be in
writing.

(1) If copartners continue to carry on the business after the
expiration of the term of their copartnership, they will be con-
sidered as carrying it on under the same provisions as those ex-
pressed in their original articles, *Crawshay v. Collins*, 15 Ves.
jun. 227; but as there might be a difficulty in enforcing them,
without their being renovated by some written agreement be-
tween the parties, it will be proper that this should be done
either by an indorsement upon the copartnership deed (where
the terms are nearly the same as before) or (where they greatly
differ) by a distinct instrument, in which latter case make the
deed by indenture, as in the case of an original copartnership,
reciting the former articles as *post*, No. XIII.

(2) If the copartnership have been already renewed, say,
“ WHEREAS the within-mentioned articles of copartner-

Former renew

**COPART-
NERSHIP.*****Renewal
of expiring
Copartnership.***

NESS, that in pursuance of the said agreement, the said (*copartners*) do hereby for themselves, severally and respectively, and for their several and respective heirs, executors, and administrators, mutually and reciprocally covenant, promise, and agree with and to each other, and the executors and administrators of each other, in the manner following, (that is to say) that they the said (*copartners*) shall and will remain, continue, and be copartners and joint-dealers together in the trade or business of as within is mentioned, for the further term or period of years, if they the said parties shall so long live, to commence and be computed from the day of next ensuing the date of these presents, and to be carried on by them with the same or like capital stock, and in the same or like shares and proportions as to profit and loss, and under and subject to the same or like terms, conditions, provisos, limitations, restrictions, and agreements in all respects as are within-declared, expressed, or mentioned, relative to or concerning the joint trade, by the within-written indenture, agreed to

ship between the within-named (*copartners*) would have expired on the day of , but was continued and renewed by the above-written deed-poll for the further time or period of years. AND WHEREAS the said renewed term or period will expire and determine on the day of next, the said (*copartners*) have agreed to continue and again renew the said copartnership for a further term of years, to be computed from the said day of ."

be carried on in copartnership, any thing therein contained or implied to the contrary thereof in any wise notwithstanding, save only and except that, &c. (1). AND ALSO, that they the said parties, and each of them, shall and will, at any time, and from time to time hereafter, at the request in writing of the other of them, make, do, and execute, at their joint expense, all such further or other acts, deeds, covenants, provisos, declarations, and agreements, as by counsel in the law shall be deemed necessary or expedient for carrying these presents, and the agreement hereby entered into, into complete effect, agreeably to the true intent and meaning hereof, and of the within-written indenture. IN WITNESS, &c.

**COPART-
NERSHIP.**

*Renewal
of expiring
Copartnership.*

**Covenant to
execute further
assurances.**

(1) If the terms of the copartnership are proposed to differ in any respect from those agreed upon in the former articles, add them here by way of exception, as,

“ Save only and except that,” &c.

And add such new provisions as may accord with the intentions of the parties—which will probably be found by reference to the margins of No. III.; see also INDEX, *voce* CO-PARTNERSHIP.

COPART-
NEERSHIP.

*Deed of
Dissolution.*

No. XIII.

Deed of Final Dissolution of a Copartnership between two Persons where one of the Parties continues to carry on the Trade.

*Variations where the Dissolution is by Indorsement (1).
Also where there are several Copartners.
Where the Dissolution is as to one Party only.*

Other Variations as in the margin below.

PARTIES. THIS INDENTURE of two parts, made the day of . . . , in the . . . year of the reign, &c. and in the year of our Lord . . . BETWEEN (the original or continuing copartner or copartners) of, &c. . . , copartners in trade with (the retiring copartner) of the one part, and the said (retiring copartner) of, &c. . . of the other part.

Recital of deed
of copartnership.

WHEREAS (2) by a certain indenture bearing date

(1) This deed of dissolution is to be understood to have reference to a dissolution by mutual agreement, or by notice, prior to its natural expiration by effluxion of time or the death of either of the parties; in either of which cases no deed of dissolution will be necessary, unless the copartnership deed be defective, in not containing the requisite provisions for such event.

Dissolution by
separate deed,
or indorsement.

A deed of dissolution of copartnership may be either by a separate instrument, or by indorsement on each part of the copartnership deeds.

Indorsement.

(2) If the dissolution be by indorsement, the recital of the deed of copartnership will of course be unnecessary.

on or about the day of , which was in the
 year , and made or expressed to be made
 between, &c. . THEY the said (*copartners*)
 mutually agreed to become copartners together in
 the trade or business of , under the firm
 of , for the term of years from the
 day of then next ensuing, (if they
 the said parties should so long live), but determin-
 able nevertheless at any time during the said term,
 upon either of the said parties giving six calendar
 months notice in writing unto the other of them,
 of his desire to dissolve or discontinue the same,
 (*or as the case may be*) (1). AND it was by the
 said indenture agreed, that upon such dissolution,

COPART-
 NERSHIP.

*Deed of
 Dissolution.*

(1) Recite the clause or proviso, under which the dissolution is proposed to take place, or recite generally, Recital of cause of dissolution.

“AND WHEREAS the said parties have mutually agreed to discontinue and dissolve the said copartnership.”

If it were agreed that the party requiring the dissolution should not carry on the same trade within a given distance, which is sometimes done, to prevent either party from obtaining a dissolution for sinister purposes, add, Retiring party not to carry on the same trade.

“AND by the same indenture it was also provided, that in case of a dissolution of the said copartnership, by any of the means therein mentioned, other than by death, the party requiring or occasioning the same should not, for the space of years thence next ensuing, set up or carry on, or cause to be set up or carried on, the said trade of , without the consent of the other of them first obtained for that purpose, within the distance of miles from the place where the said copartnership business should then be carried on.”

**COPART-
NERSHIP.**

*Deed of
Dissolution.*

Agreement of
parties to dis-
solve the co-
partnership.

Of valuation
being made of
copartnership
stock.

the accounts of the said copartnership should be settled and adjusted up to the day of the expiration of the said notice, in like manner as if the said copartnership had expired by effluxion of time, and that the estate and interest of the party giving such notice of and in the messuages, dwelling-house, and premises wherein the said trade should be then carried on, and also of and in the stock in trade and effects of the said copartnership, should be taken by and assigned to the other of the said parties, at a fair valuation and appraisement, and that all proper deeds, conveyances, acts, and things, should be made and done by and between the said parties, which should be requisite to carry such dissolution and assignment into effect. AND WHEREAS the said parties in pursuance of the said in part recited {or within-written} indenture, have carried on the said trade or business in copartnership together, until the day of now last past. AND WHEREAS it hath been mutually agreed by and between the said parties (or in pursuance of such notice as aforesaid being given by the said (*retiring partner*) to the said (*continuing partner*) (*or as the case may be*)) that the said copartnership shall be dissolved and cease on the day of the date hereof, and that the copartnership estate and effects shall be assigned to and henceforth become the property of the said (*continuing partner*). AND WHEREAS a valuation and appraisement to the satisfaction of both the said parties have been

made of the (1) stock in trade, merchandise, debts and effects of the said copartnership, at the sum of £ , which it hath been agreed shall be taken by the said (*continuing partner*), and paid for by him to the said (*retiring partner*) within the space of months from the date hereof, by equal quarterly payments or instalments of £ each, on the days or times following, (that is to say) the sum of £ , part thereof, on the day of ; the sum of £ , other part thereof, on the day of ; and the sum of , the remaining part thereof, on the day of , which will be in the year . AND that the said instalments shall be secured by the promissory notes (2) of hand of the said (*continuing partner*) payable to the said (*retiring partner*) or his order, at the times aforesaid, and also a warrant of attorney to confess judgment against him for securing the punctual payment of the said notes ; but that no judgment shall be entered up thereon, until default

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NERSHIP.

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Dissolution.

Stock to be
taken by con-
tinuing partner,
and paid for by
instalments,

and secured by
notes of hand,
and warrant of
attorney.

(1) If it be intended that the lease of the premises where the trade is carried on shall be taken by the continuing co-partner, say,

Lease to be
taken by con-
tinuing partner.

“Of the lease of the messuage or tenement and premises where the said trade or business is now carried on, at the sum of £ ; and of the stock in trade, merchandise, debts, and effects of the said copartnership, at the sum of £ , making together the sum of £ , which it hath been agreed shall be taken by,” &c. *as above*.

(2) Or bills of exchange, bonds, &c. as the case may be ; and see *ante*, p. 61. Variation.

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NERSHIP.

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Dissolution.

shall be made in payment of some or one of the said notes. AND whereas in pursuance of the said agreement, the said (*continuing partner*) hath this day given unto the said (*retiring partner*) his several promissory notes of hand, bearing even date respectively with these presents, for payment of the said instalments at the respective times hereinbefore mentioned for the payment thereof; and hath also given and executed a certain deed poll or warrant of attorney bearing even date with these presents, authorizing and , two attornies of his majesty's court of King's Bench at Westminster, jointly and severally, or any other attornies or attorney of the same court to confess a judgment in an action to be brought against him by the said (*retiring partner*) in the said court, for the sum of £ as in debt for money lent, and costs of suit, and under or upon which said warrant of attorney is written a defeazance, that, &c. (1) as by the said promissory notes and warrant of attorney, reference being thereunto had, will more fully appear; [and (*if the case be so*) the said (*retiring partner*) hath moreover, by indenture of even date also herewith (2), and made or

Defeazance.

Assignment of premises should be by separate instrument.

(1) Pursue the terms of the defeazance.

(2) The assignment of the premises where the business was carried on should be by separate instrument, and not included in the deed of dissolution, which might occasion an inconvenience on a future sale, by rendering the assignment, which would belong to the purchaser, inseparable from the deed of

expressed to be made between the same persons as are parties hereto, assigned over and assured unto him the said (*continuing partner*) the said messuage or tenement, buildings and premises, whereupon the said trade or business is now carried on.] Now THIS INDENTURE WITNESSETH, that in further pursuance of the aforesaid agreement, and for carrying the same into effect, and in consideration of the premises, THEY the said (*copartners*) (1) HAVE, and each of them HATH, determined, put an end to, and dissolved, and by these presents DO, and each of them DOT, determine, put an end to, and dissolve, upon and from the day of the date and execution of these presents, and thenceforth for ever, the copartnership now or heretofore subsisting between them in the said trade or business of _____, as aforesaid. AND it is hereby agreed and declared, that notice of the said dissolution shall or lawfully may be forthwith inserted in the London Gazette, or otherwise promulgated and made known by them or either of them, the said parties, as they shall re-

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NERSHIP.

Deed of
Dissolution.

Witness, that
partnership
shall henceforth
be dissolved.

Notice thereof
to be given.

dissolution, which ought to remain in the hands of the vendor; see such assignment, WILDE'S SUPPLEMENT, No. XXIX. Should however it be desirable, in order to save expense, or for any other reason, that the assignment should be made in the deed of dissolution, omit the words within brackets, and see *post*, rider (A), p. 234.

(1) If there be several copartners, and one only retires, say,

“Mutually and reciprocally, so far as regards the said (*retiring copartner*) and his estate and interest in the said in part recited copartnership, Have,” &c.

Several
copartners.

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NERSHIP.**

*Deed of
Dissolution.*

Mutual releases
of claims upon
each other.

spectively think fit (1). AND each of them the said (*copartners*) for himself, his heirs, executors, and administrators, doth hereby remise, release, and for ever quit claim unto the other of them (2), his heirs, executors, and administrators, and wholly discharge him and them of and from all and all manner of actions, cause and causes of action, suits, controversies, accounts, reckonings, debts, sum and sums of money, claims, and demands whatsoever, both at law and in equity, which either of them the said parties heretofore had or now hath, or which he, his heirs, executors, and administrators, shall or may, or without these presents would or

Personal notice
should be given
to customers.

(1) Notwithstanding a dissolution of the copartnership, the parties will be considered as partners with respect to third persons, until notice of the dissolution be promulgated to the world, *Gorham v. Thomson*, Peak. N. P. Ca. 42. This notice is usually given in the London Gazette, in conformity to the usage of the court of Chancery, in regard to sales, bankruptcies, &c.; but it was holden by Lord Kenyon, in the case of *Graham v. Hope*, Peak. N. P. 154, that this alone was not a sufficient notice, and that "it was incumbent on persons dissolving a partnership to send notice of such dissolution to all persons with whom they had dealings in partnership;" and see *post*, p. 233.

Several part-
ners.

(2) If there be several partners, and the dissolution is as to one of them only, say,

"AND the said (*continuing copartners*) on the one part, for themselves jointly and severally, and for their several and respective heirs, &c. Do hereby remise, &c. unto the said (*retiring copartner*), and he the said (*retiring copartner*) for himself, his heirs, &c. DOTH remise, &c. unto the said (*continuing copartners*) and each and every of them, ALL, &c. as in the text.

might have, claim, demand, or be entitled to from or against the other of them, his heirs, executors, or administrators, by reason or in consequence of the said copartnership, or any clause, covenant, agreement, matter, or thing, in the said in part recited article or indenture of copartnership contained, {save only and except and without prejudice to the hereinbefore in part recited promissory notes, and warrant of attorney so given by the said (*continuing partner*) for securing the payment of the said sum of £ to the said (*retiring partner*) as aforesaid, and to any remedies, means, or proceedings which may be lawfully had upon or by virtue of the same respectively, or upon or by reason of any of the covenants or agreements in these presents contained, either for enforcing the due execution and performance thereof, or for recovering damages for or on account of any breach or default of or concerning the same or any of them (1).} AND THIS INDENTURE ALSO WITNESSETH, that in further

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Dissolution.*

FURTHER
WITNESS, re-
tiring party as-
signs his share
of the stock, &c.

(1) I have sometimes found in practice, that a *distinct* and *separate* release from each of the parties to the other has been more satisfactory than the *reciprocal* release above inserted, in which case the following form may be substituted in its place:

Separate re-
leases from
each of the
parties to the
other.

“AND the said (*retiring party*) for the considerations aforesaid, HATH remised, released, and for ever quitted claim, and by these presents DOTH, for himself, his executors, and administrators, remise, release, and for ever quit claim unto the said (*continuing partner*) his executors, administrators, and assigns, all and all manner of actions, cause and causes of action, suits, differences, controversies;

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Dissolution.*

pursuance of the said agreement, on the part of the said (*retiring partner*), and for and in consi-

covenants, agreements, estate, right, title, claims, and demands whatsoever, both at law and in equity, which he the said (*retiring partner*) now hath, or which he, his executors or administrators, can or may, at any time or times hereafter, have, claim, or demand against the said (*continuing partner*) his executors, administrators, or assigns, for or by reason or means of the said copartnership, or any matter, cause, or thing whatsoever relating thereto, up to the day of the date hereof, save and except the covenants, clauses, and agreements hereinafter contained on the part and behalf of the said (*continuing partner*) his executors, administrators, and assigns, to be observed, done, or performed, and also save only and except the said sum of £ so due from him the said (*continuing partner*) as aforesaid, by virtue of the above-mentioned notes of hand and warrant of attorney respectively, bearing even date herewith, &c. (*as the case may be*). AND the said (*continuing partner*) for the considerations aforesaid, and in consideration of the assignment and release hereinbefore made by the said (*retiring partner*), doth hereby accept the said joint stock, debts, and effects in full of all demands, which he, his executors or administrators has, or can or may have, on the said (*retiring partner*) his executors or administrators, for or by reason or means of the said copartnership, or on any account whatsoever relating thereto, except as hereinbefore and hereinafter expressed; and the said (*continuing partner*) HATH accordingly remised, released, and for ever quitted claim, and by these presents DOTH, for himself, his heirs, executors, and administrators, remise, release, and for ever quit claim, unto the said (*retiring partner*) his executors and administrators, all and all manner of actions, and cause and causes of action, suits, differences, controversies, covenants, agreements, estate, right, title, claims, and demands whatsoever, both at law and in equity, which

deration of the sum of £ , being the part, share, or proportion of the said (*retiring copartner*) of and in the said sum of £ at which the said copartnership estate and effects have been valued as aforesaid, to be paid to the said (*retiring partner*) by the said (*continuing partner*), at the times and in the manner hereinbefore expressed, and also for and in consideration of the covenants, declarations, and agreements, hereinafter entered into by the said (*continuing party*) to and with the said (*retiring partner*), HE (1) the

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Dissolution.*

he the said (*continuing partner*) now hath, or which he, his executors, administrators, or assigns, can or may, at any time or times hereafter, have, claim, or demand against the said (*retiring partner*) his heirs, executors, or administrators, for or by reason or means of the said copartnership, or any matter, cause, or thing relating thereto, up to the day of the date hereof, save and except the covenants, clauses, and agreements herein contained on the part and behalf of the said (*retiring partner*) his executors and administrators to be observed, done, and performed."

(1) An assignment of the share of the retiring copartner to the continuing party will not protect him from the debts of the house, (see *Smith v. Jameson*, 5 Durnf. and E. 601); for this purpose, therefore, where the continuing party is not satisfied with the covenant or bond of indenture of the retiring party, the effects of the copartnership are sometimes assigned to a trustee, in trust, in the first instance, for the payment of debts, and the residue to the remaining partner; see *ex parte Fell*, 10 Ves. jun. 347; in which case say,

Assignment of
retiring part-
ner's share no
protection to
him against
debts.

"AND also for and in consideration of the sum of 5s. of lawful money of England to the said (*copartners*) respectively, in hand at the time aforesaid well and truly paid by

Assignment of
stock to trustee.

COPART-
NERSHIP.

*Deed of
Dissolution.*

said (*retiring partner*) HATH bargained, sold, assigned, transferred, and set over, and remised and released, and by these presents DOTH bargain, sell, assign, transfer, and set over, and remise and release unto the said (*continuing partner*) his executors, administrators, and assigns, 'ALL that the moiety or half part (*or as the case may be*) (the whole into equal parts being considered as divided) and all other the share and proportion of him the said (*retiring partner*) of and in all and singular the joint stock in trade, goods, wares, merchandises, implements, utensils, estate, and effects whatsoever, belonging to the said late and hereby dissolved copartnership and joint trade, or to the said parties hereto in respect thereof, and also all and every the book and other debts, and sum and sums of money whatsoever due and owing, or belonging to the

the said (*trustee*), the receipt whereof is hereby acknowledged, THEY the said (*copartners*) HAVE, and each of them HATH granted, bargained, sold, assigned, transferred, and set over, and by these presents DO, and each of them DOTH grant, bargain, sell, assign, transfer, and set over unto the said (*trustee*) his executors, administrators, and assigns, ALL and singular the joint stock in trade, goods, wares," &c. *as above*.

Lease.

If an assignment of the premises where the business is carried on be intended to be assigned in the deed of dissolution (*sed vid. ante*, p. 216, n. (2)), it may be made here, as *post*, rider (A). p. 234.

joint trade or copartnership, or to the said parties or him the said (*retiring party*) on account thereof, and all the estate, right, title, interest, trust, property, possession, benefit, claim, and demand whatsoever, both at law and in equity, of him the said (*retiring partner*), of, in, to, or concerning the same, and also of, in, to, or concerning the entirety of the said stock in trade, estate, and effects, and every or any part thereof, and of, in, and to all and singular the books of accounts, bills, notes, securities, and other papers, evidences, and writings whatsoever, relating thereto, or to any part thereof, or to the said joint trade or copartnership. To HAVE AND TO HOLD (1) the said moiety or half part, &c. or other share, of or in the said stock in trade, debts, and effects, and all and

COPART-
NERSHIP.

*Deed of
Dissolution.*

To hold to the
continuing
party abso-
lutely.

(1) If the stock in trade be assigned to a trustee, say,

Assignment of
stock to trustee.

“TO HAVE AND TO HOLD the said stock in trade, goods, merchandises, estate, and effects, and all and singular other the premises hereby assigned, or expressed or intended so to be, and also all powers, remedies, and means incident thereto, and the full benefit and advantage thereof unto the said (*trustee*) his executors, administrators, and assigns, UPON THE TRUSTS nevertheless, and for the ends, intents, and purposes hereinafter expressed, (that is to say) UPON TRUST in the first place to pay, satisfy, and discharge all debts, and other just claims and demands whatsoever, of or upon the same, for or in respect of the said copartnership, and after full payment and satisfaction thereof, then as to and concerning the clear surplus or residue thereof IN TRUST for the said (*continuing partner*) his executors, administrators, and assigns, to and for his and their own proper use and benefit absolutely and for ever.”

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Dissolution.*

Letter of attorney to receive debts, &c.

Several continuing partners.

Each party to get in outstanding debts.

singular other the premises hereby assigned, or expressed or intended so to be, unto him the said (*continuing partner*) his executors, administrators, and assigns, to and for his and their own proper use and benefit, absolutely and for ever (1). AND in order (2) the better to enable the

(1) If there be two or more remaining partners, say,

“Unto the said (*continuing parties*) equally to be divided between them, share and share alike, as tenants in common, and to their respective executors, administrators, and assigns, for his and their own use, and as his and their own proper goods, chattels, and effects, absolutely and for ever, in such and the same shares and proportions as they the said (*retiring parties*) were and stood possessed of or interested in the whole of the said copartnership estate and effects at or immediately before the dissolution of the said copartnership.”

(2) If each party is to get in outstanding debts excepted out of the assignment, instead of this letter of attorney, say,

“AND for the considerations aforesaid, it is hereby declared and agreed by and between the said parties to these presents, and each of them the said parties, for himself, his executors and administrators, doth hereby covenant, promise, and agree with and to the other of them, his executors and administrators, in the manner following, (that is to say) that he the said (*continuing partner*) his executors and administrators, shall and will use his and their utmost endeavours to call in with all due and proper speed and diligence all such debts and sums of money as are yet outstanding, and remaining due and owing to them the said parties, from any person or persons whomsoever, for or on account of the said joint trade and copartnership, and that the same debts and sums of money, (after deducting thereout all costs and charges expended or sustained in or about

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said (*continuing partner*) his executors, administrators, and assigns, to get in and receive the copartnership estate, effects, and premises, hereby assigned, HE the said (*retiring partner*) HATH made, deputed, constituted, and appointed, and by these presents DOTH make, depute, constitute, and irrevocably appoint him the said (*continuing partner*) his executors, administrators, and assigns, the true and lawful attorney and attornies of him the said (*retiring partner*) his executors and administrators, in his or their name or names solely and alone, or jointly with and in the name of him the said (*continuing partner*), his executors, administrators, or assigns, or otherwise, (but at the sole risk and costs of the said (*continuing partner*) his executors, administrators, and assigns) to ask, demand, and receive, and to sign and give full and effectual receipts, acquittances, and discharges for all and singular the estate and effects of or in any wise belonging to the said copartnership or joint trade, or any part thereof, with full and suf-

getting in the same) shall from time to time, as and when the same shall be gotten in and received, be paid to and equally shared and divided between them the said parties, their respective executors and administrators, without any preference or precedence to either of them, and without any benefit or advantage of survivorship to be had, or taken by, or to accrue to, either of the said parties in case of the decease of the other of them, before all the said debts shall be gotten in and paid and divided as aforesaid."

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Covenant by
retiring party,
that he has not
disposed of his
share.

sufficient power and authority to state and settle all accounts, reckonings, matters and things whatsoever, relative to the said joint trade, with all and every or any person or persons whomsoever, and to compound for or release all or any of the debts or demands of or belonging thereto, and to submit the same or any question or controversy relating thereto to arbitration or other reference, and to sign certificates of bankrupts of any debtor or debtors thereto, and otherwise to act in the premises in all things, as he or they shall think proper, and one or more attorney or attornies under him or them for the purposes aforesaid, or any of them, from time to time to make, depute, appoint, and remove at pleasure, and generally to use, take, and prosecute every or any lawful or equitable method or expedient whatsoever, for recovering and receiving the said copartnership estate, debts, and effects, or any part thereof, in as full, ample, and beneficial a manner to all intents and purposes, as they the said (*copartners*) might or could jointly do, or have done, in case the said copartnership had been still subsisting and in force. AND the said (*retiring partner*) for himself, his heirs, executors, and administrators, doth hereby covenant, declare, and agree with and to the said (*continuing partner*) his executors, administrators, and assigns, in the manner following, (that is to say) that he the said (*retiring partner*) hath not at any time heretofore sold, assigned, or disposed of, or charged or incumbered his particular share, or proportion of, or interest

in the said copartnership estate or effects, or any part thereof, or done, or knowingly suffered to be done, any other act, matter, or thing whatsoever, except in the usual course of trade, and with the privity of the said (*continuing partner*), whereby or by means whereof the joint stock of the said copartnership, or the monies, goods, debts, or effects belonging to the same, can or may, at any time hereafter, be seised, attached, extended, taken in execution, incumbered, or prejudicially affected in any manner whatsoever, or whereby or by means whereof the assignment or other assurance hereinbefore made, or intended to be made, of the share, proportion, or interest, of him the said (*retiring party*) therein, is, or can or may be or become void or voidable. AND that he the said (*retiring partner*) his executors or administrators, shall not nor will at any time or times hereafter, without the express consent in writing of the said (*continuing partner*) his executors, administrators, or assigns, receive, release, acquit, or discharge any of the stock, goods, estate, or effects, due, owing, or belonging to the said copartnership, or to them the said parties hereto, or either of them in respect thereof, nor release, vacate, or in any wise impede any actions or suits which shall be instituted by the said (*continuing partner*) his executors, administrators, or assigns, for or on account of the same, or any part thereof, nor do nor cause to be done any other act, deed, matter, or thing whatsoever, whereby or by means whereof he or they shall or

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Nor will release
or incumber the
same.

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Dissolution.

And execute
further assu-
rance.

And permit his
name to be
used.

may be prevented or delayed in or from receiving or recovering the same. AND further that he the said (*retiring partner*) his executors and administrators, shall and will, from time to time, and at all times hereafter, at the request, costs, and charges in the law of the said (*continuing partner*) his executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, assignments, conveyances, assurances, matters, and things whatsoever, not only for the further and more perfectly or satisfactorily assigning and assuring the part, or share, and premises hereby assigned, or expressed or intended so to be, unto the said (*continuing partner*) his executors, administrators, and assigns, but also for the better enabling him and them to recover, receive, possess, and enjoy the same, to and for his and their own proper use and benefit, according to the true intent and meaning of these presents. AND for that purpose shall and will from time to time, and at all times hereafter, permit and suffer his or their name or names to be made use of in all actions, suits, and other proceedings whatsoever, which shall or may be commenced or prosecuted by him the said (*continuing partner*) in relation thereto, in such manner and form as he the said (*continuing partner*) his executors, administrators, or assigns, or his or their counsel in the law, of the degree of a barrister, shall reasonably require or advise, (he the said (*retiring*

partner) being from time to time well and satisfactorily saved harmless and indemnified from and against all costs, damages, and expenses by reason thereof). AND moreover, that he the said (*retiring partner*) shall not nor will at any time or times within or during the space or term of years, to be computed from the day of the date of these presents, either for or on his own account, or for or on the account of any other person or persons whomsoever, set up, carry on, or exercise, either by himself and in his own name, or by or in the name of any other person or persons, the said trade or business of , or any branch thereof, within the distance of miles from aforesaid (1), nor within the

COPART-
NERSHIP.*Deed of
Dissolution.*Retiring party
will not solicit
custom, nor set
up same trade.

(1) A stipulation prohibitory of a person carrying on his trade in any part of the kingdom, or for any definite time, is void, as being detrimental to the general good of the community, and therefore contrary to the policy of the law; see Allen, 67; Ipswich Taylor's Ca. 11 Co. 53, b.; Co. Lit. 206. b. But where the restriction is confined to a particular place, it will be valid, for "although a man be prohibited from carrying on his trade in one place, he may pursue it in another, and the welfare of the state is not concerned in what place a man exercises his calling." Vid. Broad v. Jolyffe, Cro. Jac. 596; 2 Bulstr. 136; Chesman v. Hainby, 2 Stra. 739; Mitchell v. Reynolds, 1 P. Wms. 181; Christian v. Nainby, 2 Brow. Ch. Ca.; and see Shackle v. Baker, 14 Ves. jun. 468; Crutwell v. Lye, 17 ib. 335; Morris v. Colman, 18 Ves. 438; also 3 Elem. Conv. 230. "It is fit, however, that a good or sufficient consideration in an agreement for restraint of trade should appear on the face of the contract, because wherever such contract stands indifferent, and for ought that is known, may be good or bad, the law, *prima facie*, presumes it to be bad." Parker, Ch. Just. in Mitchell v. Reynolds, *ubi supra*.

Restriction
against retiring
party carrying
on the same
trade.

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NERSHIP.

*Dred of
Dissolution.*

Continuing
partner will
pay debts and
indemnify.

said term or period, either directly or indirectly serve, or solicit to serve, or supply with or procure for any person or persons who now is, or are, or within three calendar months next preceeding the date of these presents has or have been a regular or habitual customer or customers of the parties hereto, as copartners as aforesaid, any article or species of commodity or merchandize in which they the said parties now do, or have been hitherto used and accustomed to trade, deal, or traffic. And the said (*continuing partner*) for himself(1), his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said (*retiring partner*) his executors and administrators, that he the said (*continuing partner*) his executors, administrators, and assigns, shall and will well and truly pay and satisfy, or cause to be paid and satisfied, all and every the debt and debts, and sum and sums of money, bill and bills of exchange, dues, claims,

Several conti-
nuing parties.

(1) If there be several partners who continue to carry on the trade, say,

“AND the said (*continuing parties*) for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, but not the one for the other or others of them, or the heirs, executors, or administrators of the other or others of them, but each for himself only, and his and their respective heirs, executors, and administrators do, and each of them doth covenant, &c. that they the said (*continuing parties*) or some or one of them, (each covenanting severally as aforesaid) shall and will, &c.”
as above.

and lawful demands whatsoever, which now is or are, or which shall or may at any time hereafter be or become due or payable by or from them the said (*parties*) or either of them, for or in respect of the said joint trade or copartnership, or the stock or effects thereof, and shall and will from time to time, and at all times hereafter, well and sufficiently save, defend, keep harmless and indemnified him the said (*retiring partner*) his heirs, executors, and administrators, and his and their lands and tenements, and goods and chattels, and of and from the same, and all and all manner of actions, cause and causes of action, suits, and other proceedings whatsoever, which shall or may be had or prosecuted against him the said (*retiring partner*) his executors or administrators, either solely or jointly with the said (*continuing partner*) his executors or administrators, in respect thereof; AND shall and will from time to time, and at all times hereafter, at the reasonable request, and at the costs and charges of the said (*retiring partner*) his executors, administrators, and assigns, produce and show forth unto him or them, or to any other person or persons by him or them lawfully authorised in that behalf, or permit and suffer him, them, or any of them, at the office or counting-house of the said (*continuing partner*) to take copies or abstracts of all, every, or any receipts, acquittances, discharges, documents, and evidences of any payment or payments made of, for, or on account of any debt or sum now due, or growing or becoming due, from the said copartnership trade, or him the said

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NERSHIP.

*Deed of
Dissolution.*

And produce
vouchers.

COPART-
NERSHIP.

Deed of
Dissolution.

And pay instal-
ments when
due.And indemnify
against his name
being used.

(*retiring partner*) in respect thereof, for the purpose of manifesting and authenticating the payment of the same. AND also that he the said (*continuing partner*) his executors or administrators, shall and will well and truly pay, or cause to be paid, unto the said (*retiring partner*) his executors, administrators, and assigns, the said sum of £ , for which the said notes of hand of him the said (*continuing partner*) were or have been given as aforesaid, at the times therein respectively or by the custom of merchants appointed for payment of the same. AND further, that he the said (*continuing partner*) his executors, administrators, and assigns, shall and will at all times and from time to time hereafter save harmless and keep indemnified the said (*retiring partner*) his heirs, executors, and administrators, from and against all costs, charges, damages, and expenses which he or they shall sustain or be put unto, or be liable to sustain or be put unto, through or by reason of his or their name or names being used in any action or proceeding, or matter or thing, in pursuance of the power hereinbefore contained for that purpose or otherwise, on account of the assignment hereinbefore made. AND, &c. (1). IN WITNESS, &c.

Lease assigned.

(1) If the lease of the premises where the trade is carried on be assigned by the deed of dissolution, (but see *ante*, p. 213, n. (2),) add,

“ AND also shall and will, at all times hereafter, during the remainder now to come of the said term of years,

(or during such portion thereof as he or they shall retain, by virtue of these presents, peaceable possession of the premises hereinbefore assigned; against the said (*retiring partner*) and all persons rightfully claiming under him) well and truly pay or cause to be paid the yearly rent of £ , by the said in part recited indenture of lease reserved, at such times and in such manner as the same is thereby made payable; and also observe and perform the covenants and agreements on the tenant's part, from henceforth to be performed and observed, during the residue of the said term, or save harmless him the said (*retiring partner*) his heirs, executors, and administrators, from and against the same respectively."

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As the deed by which the copartnership estate is assigned will belong to the assignee, the retiring party, in order to avail himself of the above covenants from the continuing party, should have a counterpart or attested copy of the assignment; or he may take a bond from the assignee conditioned for such payment and indemnity as is expressed in the covenants, and the covenants may be omitted. See the form of such bond, 1 WILDE'S SUP. NO. L. See also *ante*, INTRODUCTION.

Counterpart,
&c.

* * Upon the execution of the deed of dissolution of a copartnership, it is proper, in order to prevent further liability to the respective parties, not only that notice of the dissolution should be given in the public Gazette, *Gorham v. Thomson*, Peake's Ni. Pri. Ca. 42, which is the usual mode, but also that particular notice should be given to their correspondents, "and all the persons with whom they had any dealings in copartnership," per *Kenyon*, Ch. Just., *Graham v. Hope*, Peake's Ni. Pri. 154, as advertisements in the daily papers or London Gazette are not notice to an individual creditor, unless it be proved that they were read by him, *Boydell v. Drummond*, 2 Campb. 157; *Rex v. Gardner*, *ib.* 513; *Graham v. Hope*, *ubi sup.*; *Gorham v. Thomson*, Peake's Ni. Pri. 42; *Jenkins v. Blizard*, 1 Stark. 418; although otherwise as to strangers who had no notice of the copartnership, *Godfrey v. Turnbull*, 1 Esp. 371; and *vid.* *Barfoot v. Goodall*, 3 Camp. 147; see also *ante*, INTRODUCTION, and for a form of such notice, 2 WILDE'S SUP. NO. CLIII.

Notice to be
given of dis-
solution.

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(A.) Variation *where the Assignment of the Premises where the Business was carried on is made in the Deed of Dissolution, see ante, p. 219, notes.*

Recital of lease.

“AND WHEREAS by an indenture of demise or lease, bearing date on or about the day of , in the year , and made or expressed to be made between (*the lessor*) therein described, of the one part, and (*the retiring partner or other lessee*) therein also described, of the other part, the said (*lessor*) demised and leased unto the said (*lessee*) ALL, &c. (1) To HOLD the same with the appurtenances unto him (2) the said (*lessee*) his executors, administrators, and assigns, from the day of then last past, for the term of years to be thence next ensuing, under and subject to the clear yearly rent of £ , and the several covenants, provisos, and agreements therein contained on his and their part, to be respectively paid, performed, or observed (3), as in and by the said inden-

Parcels.

**Lease granted
to both partners.**

(1) Insert here a description of the premises from the lease.

(2) If the lease were granted to the partners jointly, say,

“Unto the said (*copartners*) their executors, administrators, and assigns, from the day of last past, for the term of years thence next ensuing, as tenants in common, under and subject,” &c. *as above.*

Assignment.

(3) If the lease were not granted but assigned to the retiring partner, recite the assignment here as,

**Of assignment
of lease to re-
tiring copartner.**

“AND WHEREAS by divers mesne assignments, and other acts in the law, and particularly by a certain indenture of assignment bearing date on or about the day of , in the year , and made or expressed to be made between (*the assignor*) therein described of the one part, and the said (*retiring party*) of the other part, the said messuage or tenement, and premises comprised in the here-inbefore in part recited indenture of lease were assigned to, and are now vested in the said (*retiring party*) his exe-

ture of lease [and assignment respectively], reference being thereunto had will more fully appear. [AND WHEREAS under or by virtue of the said in part recited deed of copartnership the said (*copartners*) have carried on the trade or business of in copartnership together until the day of last past, when the same expired by effluxion of time.] AND WHEREAS it was by the said deed of copartnership declared and agreed (amongst other things) that at the expiration of the said copartnership the said (*continuing party*) should take the dwelling-house and premises where the joint trade might then be carried on, at such sum as the same should be valued at by two indifferent persons, to be chosen as therein mentioned, and which said sum it was agreed should be secured by the bond or obligation, in writing, of the said (*continuing*

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Of trade car-
ried on in co-
partnership.

cutors, administrators, and assigns for the residue of the said term of years, subject to the rent, covenants, and agreements in the said indenture of lease reserved and contained, on the part of the tenant, lessee, or assignee, to be paid, performed, and observed for or in respect of the same premises."

If the assignment were made to the copartners jointly, say,

Assignment to
both partners.

"AND WHEREAS by indenture, &c. (*as before*) the said premises were assigned to, and are now vested in the said (*copartners*) their executors, administrators, and assigns for the residue of the said term of years, subject to the rent and covenants in the said indenture of lease contained on the tenants or assignees part to be performed or observed, for or in respect of the same premises, and also as between them the said (*copartners*) their respective executors and administrators, to the covenants, provisos, articles, and agreements contained, implied, or referred to concerning the same, in or by the therein and hereinbefore in part recited indenture or deed of copartnership."

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Of valuation
made.

Of bond given.

WITNESS,
That in con-
sideration of sum
secured to be
paid to the
retiring party.The retiring
party assigns.

party), to be paid at the times and in the manner therein and hereinafter mentioned. AND WHEREAS the said messuage or tenement and premises comprised in the said in part recited indenture of lease (being the premises where the said copartnership trade is now carried on), together with the joint stock in trade, have been valued to the satisfaction of the said (*retiring party*) at the sum of £ , [that is to say, the said messuage or tenement, and premises, at the sum of £ , and the said stock in trade, at the sum of £ (1), making together the sum of £ .] AND WHEREAS the said (*continuing party*), in pursuance and performance of the agreement in the said in part recited indenture contained in that behalf, hath, by his bond or obligation in writing, bearing or intended to bear even date with these presents, become bounden unto the said (*retiring party*) for the payment of the said sum of £ , at the times and in the manner therein mentioned. NOW THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the said in part recited bond, so far as regards the said sum of £ , part of the said sum of £ , in the condition of the said bond mentioned, [and also for and in consideration of the further sum of 5s. of lawful current money of England to the said (*retiring party*) in hand well and truly paid by the said (*continuing party*) at or before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged,)] HE the said (*retiring party*) HATH bargained, sold, assigned, transferred, and set over, and by

Apportionment
of consideration.

(1) This apportionment of the consideration money is not necessary where the assignment is made in the deed of dissolution itself, but only when made by a separate instrument ; see 55 Geo. III. c. 184 : where, however, the subjects of valuation are of a nature so totally different, it seems to be better to define the amount of each.

these presents DOTH bargain, sell, assign, transfer, and set over unto the said (*continuing party*) his executors, administrators, and assigns, ALL (1) that the said messuage, tenement, or dwelling-house, shop, yard, and other the premises comprised in, and expressed to be demised by the said hereinbefore in part recited indenture of lease of the day of [and so assigned and transferred unto the said (*retiring party*) by the said in part recited indenture of assignment, of the day of] as hereinbefore is mentioned, with all and singular the rights, members, easements, privileges, advantages, and appurtenances, to the same premises belonging, or therewith or with any part thereof now or heretofore occupied or enjoyed; together with the said in part recited indentures of lease [and of assignment respectively,] and all mesne assignments and underleases, if any thereof, and all benefit and advantage of the same respectively, [and of all and every the covenants, clauses, provisos, and agreements therein [respectively] contained, which on the part of the lessor or landlord, or any underlessees or underlessee of the said premises, are to be performed or observed;] and all the estate, right, title, interest, term or number of years now to come and unexpired, property, claim, and demand whatsoever, both at law and in equity, or otherwise howsoever, of him the said (*retiring party*) of, in, to, or out of the same premises, and every part and parcel thereof, under or by virtue of the said indentures of lease [and of

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The leasehold
premises.

(1) If the lease or assignment were made to the copartners Moiety, &c. jointly, say,

“ALL that undivided moiety or full half part (the whole into two equal parts being considered as divided) and all and singular other the part or share of him the said (*retiring party*) under or by virtue of the said indenture of copartnership, or otherwise howsoever, of and in ALL, &c.”
as above.

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Dissolution.*

To hold to the
continuing
party for the
residue of the
term.

Subject to the
rent and cove-
nants contained
in the lease.

Covenant by
retiring partner
that the lease
is valid.

assignment, or either of them] or otherwise howsoever, To HAVE AND TO HOLD (1) the said messuage, tenement, or dwelling-house, and all and singular other the leasehold premises hereby assigned, or otherwise assured or intended so to be, [and every part or parcel of the same, with their and every of their respective rights, members, privileges, easements, advantages, and appurtenances] unto him the said (*continuing party*) his executors, administrators, and assigns from henceforth, for and during all the residue or remainder of the said term or period of years, in and by the said in part recited indenture of lease granted, which is or may be yet to come and unexpired by effluxion and computation of time, [and in such and the same, or the like manner, and as beneficially to all intents and purposes as the said (*retiring party*) now holds or enjoys, or at or immediately before the sealing and delivery of these presents held or enjoyed the same, or any part thereof]; SUBJECT, NEVERTHELESS, to the payment of the yearly rent in and by the said in part recited indenture of lease reserved, or such part thereof as by the tenant or lessee of the same premises is or ought to be paid for or in respect thereof, from and after the day of now last past, and to the performance and observance of the covenants, provisos, and agreements, therein contained, which on his or their part or behalf are or ought to be observed or performed from and after the date of these presents. AND the said (*retiring partner*) doth hereby for himself, his heirs, executors, and administrators, covenant and declare with and to the said (*continuing partner*) his exe-

Moiety, &c.

(1) If the lease or assignment were made to the copartners jointly, say,

“TO HAVE AND TO HOLD the said undivided moiety or half part of him the said (*retiring party*), hereinbefore assigned, or otherwise assured or intended so to be, of and in the said messuage or tenement,” &c. *as above*.

cutors, administrators, and assigns, in the manner following (that is to say) that for and notwithstanding any act, deed, matter, or thing, by him the said (*retiring partner*) done, occasioned, or knowingly suffered to the contrary, the said in part recited indenture of lease is a valid and effectual lease, both at law and in equity, of the messuage and premises thereby expressed to be demised. AND ALSO, that for and notwithstanding any such act, deed, matter, or thing as aforesaid, he the said (*retiring partner*) hath full and lawful power and right to assign and assure the same unto the said (*continuing partner*) his executors, administrators, and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents. AND further, that he the said (*continuing partner*) his executors, administrators, and assigns, shall or lawfully may, at all times hereafter, during the remainder now to come of the said term by effluxion of time, hold, possess, and enjoy all and singular the said premises, with the appurtenances, for his and their own use, without any hindrance, molestation, or interruption whatsoever by the said (*retiring partner*) or any person or persons now or hereafter lawfully claiming or entitled under or in trust for him, and that free from all former and other estates, titles, charges, liens, and incumbrances whatsoever, by him created, occasioned, or knowingly suffered (the aforesaid rents and covenant only excepted). AND moreover that he the said (*retiring partner*) and all persons now or hereafter, during the said term, rightfully claiming or possessing any estate, right, title, charge, or interest, in, to, upon, or respecting the said premises, or any part thereof, shall and will at any time or times upon the request, and at the expense of the said (*continuing partner*) his executors, administrators, or assigns, make, do, and execute, all and every such further acts, deeds, assignments, and assurances, in the law whatsoever, for the better or more satisfactorily assigning or assuring the same unto the said (*continuing partner*) his executors, administrators, and assigns, for the remainder which shall be then to come

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That he has
right to assign.

Quiet enjoy-
ment.

Free from in-
cumbrances.

Further as-
surances.

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of the said term, as by him or them or his or their counsel in the law shall be reasonably required (1)."

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Dissolution.*

**Retiring partner
not incumbered.**

(1) If the lease (or assignment) were made to both of the copartners, omit the above covenants, and add only a covenant by the retiring party that he has not incumbered, as,

"AND the said (*retiring partner*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare to and with the said (*continuing partner*) his executors, administrators, and assigns, that he the said (*retiring partner*) hath not at any time heretofore alone and without the privity, concurrence, and consent of the said (*continuing partner*) made, done, or knowingly suffered any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the messuage, or dwelling and premises hereby assigned, or otherwise assured or intended so to be, or any part, are or is or can or may be charged, incumbered, or otherwise prejudicially affected in any manner howsoever."

Fixtures.

If fixtures are to be assigned, see *ante*, Vol. III. p. 155, rider (A).

Policy.

If a policy of assurance is to be assigned, see *ante*, Vol. III. p. 158, rider (B).

PRELIMINARY OBSERVATIONS

ON

MARRIAGE SETTLEMENTS.

GREAT care and circumspection are necessary in preparing deeds of marriage settlements—for the events they are to provide for are not like those in purchase or mortgage deeds, or deeds of copartnership, or between debtors and creditors, which can be previously ascertained—but events which may or may not happen, and for persons unborn, and the number and the sex of which are wholly unknown. The primary object of every settlement must however be to make a provision for the wife, and for the issue of the marriage, should there be any; and in doing this the following contingencies must be had in view, and be provided for, *i. e.* the wife surviving the husband, the husband surviving the wife, there being children of both sexes, and they surviving both or only one of their parents; there being sons only, or one only son; daughters only, or one only daughter; a son and one or more daughters; a daughter and one or more sons; some or all of the children attaining the age of twenty-one years, or, if daughters, being sooner married; there being no children, or all of them dying under that age

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SETTLEMENTS.**

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or time : upon all of which events some observations will be submitted in the subsequent pages, in addition to those made in the INTRODUCTION, which see, *ante*, after p. 240.

Settlements are seldom so framed as to be clearly intelligible by the parties, although it is of the greatest consequence that they should be ; as for want of this it frequently happens that the property is settled under limitations and provisions which give very different interests than those intended by the settler. To obviate this difficulty, deeds of settlement should contain a plain recital of the mode in which the property is intended to be settled preliminary to the provisions, &c. introduced ; and, as far as the law will permit, technical forms of expression should be avoided. Where these are necessary to carry the desired object into effect, a familiar clause of explanation should be added, to show their legal operation.

In preparing marriage settlements, the province of counsel is generally considered to be limited to the mere act of putting into technical form the instructions of the settler, so that his intentions, be they what they may, may be carried into effect ; but it appears to me that it belongs to him to do more than this ; and that he has a right to consider himself as the general adviser of his client to the extent of every matter connected with the disposition of the property intended to be settled, as his professional experience will suggest to him inconveniences likely to arise from particular limitations, which could not occur to the party himself.

As marriage settlements have principally in view a provision for the wife and the issue of the marriage, and it is a compliment generally paid to the lady (particularly where the property to be settled is her own, or proceeds from her relations) to have the settlement prepared by her own counsel, I shall give a

general outline of some of the most common provisions for those purposes.

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† (1) If real or personal estate is to be settled on the wife and children, so as totally to exclude the husband, it must be conveyed or assigned to trustees in trust for the wife and her heirs, or executors and administrators, according to the nature of the property, until the marriage, and after its solemnization, in trust during the joint lives of her and her husband, to pay the rents or interest to such person as she shall appoint, and for want of appointment, into her proper hands, for her separate use, and the receipt of such persons to be a sufficient discharge; and if she survive her husband, the property is to be in trust for her heirs or executors, administrators or assigns; but if she die in his lifetime, then upon such trusts, &c. as she shall by will appoint (not by deed, for she might then be prevailed on by the husband to make an appointment of the reversion in his favour, which he might sell or raise money upon) and in default of appointment, in trust for the children, in the usual manner; remainder in trust for the wife and her heirs, or executors, administrators, and assigns.

Wife's property
settled for her
own benefit.

Where no provision is intended to be made for the children out of her property, but a rent-charge is to be secured to the wife out of the husband's estate (the children being provided for by the husband, or the personal property of the wife) the lands are, in consideration of the wife's fortune, and of the marriage, to be conveyed to a trustee, to the use of the husband and his heirs, until the marriage, and after the solemnization thereof, to the use of the husband for life; remainder to the use, intent, and

Rent charge to
wife.

(1) See *ante*, Vol. I. p. 426, n. (†).

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purpose, that the wife, in case she shall survive him, shall receive the proposed rent charge; with powers of distress and entry; and as to the settled premises, from and after the death of the husband, subject to the rent-charge, to the use of the trustee for one thousand years, upon trusts after mentioned; remainder to the husband in fee. Then declare the trusts of the term to be for raising the rent-charge in case of its being in arrear, and for payment to the executors or administrators of the wife a proportionable part of it from the last day of payment: there must be the usual provisions, that the trustees shall permit the surplus of the rents to be received by the reversioner and for the cesser of the term when all the trusts shall have been performed.

Mortgages on
husband's estate
to be paid off.

And if the estate intended to be settled be incumbered with mortgages or portions of mothers, sisters, &c. the wife's fortune should either be applied to discharge them, or other estates of the husband should be conveyed to trustees for the purpose of disincumbering the settled estate, and indemnifying the same in the mean time therefrom. In cases of this kind, the settlement and the deed of sale and indemnity should each state the brief contents of the other; but in the deed of indemnity it may be sufficient to say, that the husband has settled the estate intended to be preserved to and for the several uses in the said indenture of settlement declared in favour of and for the benefit of him and his wife, and the children and issue.

Wife's estate to
be settled to
joint appoint-
ment, subject
jointure, &c.

In case the estate to be settled is the wife's, and it is intended that, subject to a jointure, an annuity to her, and portions to the younger children, it should remain at the joint disposition of the husband and wife, but if, in default of any such disposition, the lands to be his; they are to be conveyed to trustees to the use of the wife and her heirs until the marriage, remainder to the husband for life, remainder to the use, intent, and purpose that the

wife shall receive a rent-charge, with powers of distress and entry, remainder to the trustees for a term, suppose three thousand years, upon the trusts after mentioned, then to and for such uses, &c. as the husband and wife shall jointly by deed appoint, remainder to the husband in fee.

The trusts of the term to be in the first place for raising the jointure, annuity, and a proportionable part of it to the executors of the wife, and then upon trust, in case there shall be any child or children of the marriage, to raise portions; namely, if only one child, such a sum—if two children, such a sum—if three or more, such a sum; the portions of the sons to be vested at twenty-one, and the portions of the daughters at that age or marriage with the consent of the husband and wife, and the survivor of them, or his or her executors *previously* had (for it would be improper to make the vesting of the portions depend on a subsequent event), to be signified by writing and attested by witnesses, that it may be a deliberate act. The portions should in no case, where the estate is burdened with a considerable rent-charge, be payable sooner than the death of the surviving parent. There must be the usual clause, that if any of the children die before their portions become vested, they shall go over to the others.

But as by a settlement on this plan none of the sons take any estate in the lands, it is not necessary to provide that the portion of the youngest son becoming an eldest shall go over to the other children.

It must also be provided, that under the clause of survivorship, no one child shall have more than the original sum intended for him, nor any two of them more than the original sum intended for them; without this precaution, one child might become entitled to the provision intended for three or more, and

**MARRIAGE
SETTLEMENTS.****Powers for
maintenance.**

a younger child might obtain nearly an equal provision with an eldest son.

In settlements upon the above plan (as well as in all others), there must also be a power to raise maintenance for the children intended to take portions, which maintenance, in case it be payable out of the lands, should never exceed four per cent., that being interest which money laid out in land is supposed to produce; and, conformable to this maxim, where it is payable out of the personal estate, it will bear interest at five per cent. from the time of becoming due, or at all events the same interest as the fund out of which it is payable produces.

**No sale or
mortgage till
some portion
payable.**

It is also proper in settlements of this nature to direct that no sale or mortgage shall be made by the trustees till some of the portions shall become payable; otherwise, as the term, in point of limitation, follows immediately the husband's life estate, a mortgage might be made, and the money taken up, while the jointress was living.

**Power for wife
to charge.**

It is likewise usual, and indeed highly reasonable, on a settlement of the wife's property, that she should have the disposal of a sum of money to be raised out of her own estate, in the event of there being no children: this may be done under the trusts of the three thousand years' term.

**Leasing powers
to husband.**

It is also proper, in such a settlement, to give the husband a restrictive leasing power; for uses may arise under the joint appointment of him and his wife which will make such a power very useful; as, otherwise, he having a life estate with the reversion in fee, subject only to the three thousand years' term, he might grant leases, subject only to that term, at his pleasure.

**If mortgages not
paid off, hus-
band to covenant
to exonerate.**

If there be any mortgages upon the estate, they should either be paid off at the time, or a covenant should be taken from the husband to discharge them within a given period, according to

his circumstances and situation, and the covenant should contain the following words: "That he will pay the money, with the accruing interest, &c. so, and in such manner, as that by such payment the premises may be exonerated and discharged of and from the mortgage debt." If these words were not inserted, the husband might pay off the existing mortgage by borrowing the money of another person and transferring the security to him: this would, however, be such an evasion of the covenant as equity would prohibit.

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And as in every marriage settlement it is of the utmost importance to get in all legal estates, and to assign all outstanding terms to trustees to attend the uses (for otherwise if the husband should mortgage without notice, and the mortgagee should get in an outstanding term, he might defeat the uses of the settlement, *quoad* his mortgage), it will be proper to declare, that on payment of the principal and interest, the mortgagee shall convey to the uses of the settlement.

Outstanding
legal estates to
be gotten in.

Although the lands, or part, be copyhold, they may be settled to the same uses as the freeholds (if the custom of the manor will admit of it) either by limitations expressed in the surrender, or by reference to the deed of settlement. And if the custom of the manor allow of limitations of *legal* estates, or, in other words, limitations to *uses*, the copyholds may be settled along with freeholds.

Copyholds may
be settled to
same uses as
freeholds.

Where the custom of the manor (as within the county of Durham) requires that legal estates should be vested in trustees, and does not admit of surrenders to uses, it is the practice, when freehold and copyhold lands are intended to be settled together, to vest the legal estate of both in trustees, in trust for the parties and their issue; in this case, therefore, a term of years cannot

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be limited to raise portions for younger children, but a trust of the fee must be created for the purpose.

And if there be any particular reason for creating legal estates of the freeholds, the copyholds must be surrendered to trustees; and the trusts may be either detailed, or a reference be made to the preceding limitations of the freeholds.

The leasing powers in settlements may also extend to copyhold lands, if a proviso be inserted that no lease shall be made of them without a licence from the lord of the manor or his steward.

**Powers of sale,
exchange, &c.**

In marriage settlements powers were formerly given to the husband and wife, or to the husband alone, to sell the settled estates, the party first settling other lands to the same uses; but powers thus given to the parties it has been found inconvenient to execute, because the new estate must then be purchased and settled before the old one can be parted with; the usual way, therefore, now is, to vest the powers in the trustees to uses (who have a *scintilla juris* to feed and serve the uses when they arise) in which case their conveyance under the power will operate as an appointment of an use to the purchaser, and divest, repeal, or determine the old uses; and to make the execution of their power of sale more effectual, it has been recommended that they shall have a power to revoke the uses of the settlement, and to appoint new ones; which supersedes every possible doubt afterwards, as to the title of a person to whom they shall convey; and in a power of this kind there should be inserted a direction, that on a sale, and until the money shall be laid out in a new purchase, it shall be invested by the trustees on government securities, or on mortgage, and that the interest shall be paid to such persons as would be entitled to the rents

of the lands to be purchased and settled; which last direction may be very advantageous to the husband and his family; for an estate which perhaps brings in only three and a half or four per cent. (compared with the sum it would sell for) may be disposed of, and the purchase-money laid out in the funds to produce five and a half or six per cent.

If a power is to be given to the husband to charge the settled estate with a given sum for his own benefit, there should be a power of mortgaging, by demise, annexed to the power to charge, for otherwise it might be difficult for him to raise the money, few persons being willing to lend on an equitable charge, because in case the interest should be in arrear, or the principal wanted, they could neither bring an ejectment nor foreclosure, but must have recourse to a bill to have the money raised by mortgage or sale; whereas if a power be given to raise it by mortgage, the term created, which will rise out of the seisin of the trustees to uses, will overreach and take place of the husband's life estate, and all other estates limited by the settlement, and the mortgagee will consequently be in the same situation as if he had a security upon the estate before the settlement was made (1).

Power to charge
or mortgage.

(1) Where the husband has no power to raise the money by mortgage, but only to charge, he must execute a deed, charging the same accordingly: this will vest the money in himself, and he may afterwards assign it to any person who will advance him the amount; or, if the power be sufficiently extensive for the purpose, he may acknowledge to have received the sum of the person who lends it to him, and may charge the estate with the payment of that sum in his favour; but in either case the lender has a mere equitable security, and cannot come at his money without the assistance of a court of equity.

And so if the husband have power, by deed or will, to charge additional portions for his younger children, and he charges the estate therewith accordingly, the children must resort to equity to have the portions raised, if the eldest son refuse to pay them.

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But where the husband is to have a power to charge the premises with the payment of a sum of money for his younger children, or for any other purpose not to take place in his life-time, a power to mortgage is evidently not so necessary to be annexed as if the money was wanted in his life-time, and therefore is not usual.

It may here be observed, that mortgages for the above purposes should always be made by demise (with a proviso that on payment of the money the term shall be void), in order that the legal estate limited by the settlement may not be displaced. And though there be different terms for years subsisting at the time, and all taking place of the limitations of the settlement, still, as the possession of the term is the possession of the reversion, the persons taking under it would have the legal estate in the lands, and the eldest son, on the death of his father, might make a tenant to the præcipe for suffering a recovery; but if the mortgage in the above circumstances were to be made in fee, it would be difficult to say what effect it would have as to the estates of which it would overreach and take place.

Some further observations will be found on these points in the notes, *post*, No. II. and in the INTRODUCTION, *ante*, (after p. 240.)

No. I.

Marriage Articles (1) *relative to Freehold Lands, &c. preliminary to a future Settlement to be made after Marriage—the Lady being a Minor* (2).

Variations *where the Lady is a Ward of Chancery.*
Where Part of the Estate is Copyhold.
Where Part Leasehold.

THIS INDENTURE of parts, made the
 day of , in the year of the reign, &c.

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MENTS.

*Marriage
Articles.*

(1) Agreements made in contemplation of marriage must, in order to be valid, be put into writing and signed by the parties to be charged therewith, or by some person lawfully authorised in that behalf; see 29 Car. 2. c. 3; or must have been so intended to be, and prevented by fraud; in which case they will in equity be equally binding on the fraudulent party; *Whitebrook v. Bevis*, 2 Brow. Ch. Ca. 565; *Maxwell v. Montacute*, Prac. Chan. 526; or they must have been partly carried into execution by one of the parties, which renders the non-performance by the other party a fraudulent act.

Articles of this kind are entered into previously to the intended marriage, either on account of the impatience of the parties to wait till a formal and legal settlement can be prepared, which, where the estates are such as to require strict and numerous limitations and provisions, may occupy a considerable time, or where one of the parties is under age, and therefore incapable of making an actual conveyance to the trustees; and see the next note.

(2) Marriage articles, *i. e.* agreements for making a future Power of infants to settle, &c.

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Parties.

and in the year of our Lord
intended husband) of, &c.

. BETWEEN (*the*
of the first part,

settlement, are necessary only where one of the parties (generally the intended wife) is under age at the time of the marriage, and the property is that of the intended wife and of a real nature; for the *personal* property or chattel interests of a woman is, for her benefit, allowed to be definitively settled on her marriage, notwithstanding her minority, as it would otherwise immediately become the absolute property of the husband; *Harvey v. Ashley*, 3 Atk. 613; *Chitty v. Chitty*, 3 Ves. 545; but as this would not be the case of real property, and as such property requires an actual conveyance to be executed by her in order to its settlement, (which an infant is incapable of doing), *Milner v. Harwood*, 18 Ves. 259, a settlement of such property cannot be actually made (unless by act of parliament or writ of privy seal, as after-mentioned) until she attain the age of twenty-one years, but if she enter into articles before her marriage, to settle her estates on her coming of age, which, when made by the assent of her friends (and, in some cases, without), see *Durnford v. Lane*, 1 Brow. Ch. Ca. 105; *Chitty v. Chitty*, 5 Ves. 545; in consideration of an adequate provision made upon her by her intended husband, these are holden to be binding upon her and her heirs; see *Uvedale v. Halfpenny*, 2 P. Wins. 154; *Cannel v. Buckel*, *ib.* 243; *Williams v. Williams*, 1 Brow. Ch. Ca. 152; *Caruthers v. Caruthers*, 4 *ib.* 502; *Ainslie v. Medlycott*, 9 Ves. jun. 19; and more especially if she leave issue of the marriage entitled to a benefit under the settlement; *Blois v. Hereford*, 2 Vern. 501; *Harvey v. Ashley*, 3 Atk. 613; *Seamer v. Bingham*, 3 Atk. 56; *Lucy v. Moor*, 4 Brow. P. C. 343; *Randall v. Willis*, 5 Ves. jun. 262; for persons claiming under such articles are considered as purchasers for a valuable consideration. And when an estate has been thus specifically agreed to be settled, it becomes a trust, which passes with the lands into whose hands soever they come, and cannot be defeated by any act of the father or trustees; *Stratford v. Powell*, 1 Ball and Beat. 25; *Neale v. Cust*, Dick. 513; and even the elopement or adultery of the wife will not defeat her of a jointure provided for her under such articles; for although adultery is made a forfeiture

(*the intended wife*) of, &c. , an infant under the age of 21 years, that is to say, being of the age

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of her dower by the statute, Westm. 2, yet that act does not extend to jointures; *Buchanan v. Buchanan*, 1 Ball and Beat. 204; *Seagrave v. Seagrave*, 13 Ves. 443; nor will such misconduct on the part of the wife preclude her from calling for a specific performance of marriage articles entered into in her favour; *Buchanan v. Buchanan*, 1 Ball and Beat. 203.

And an infant feme, being tenant in tail, may, by writ of privy seal, levy a fine, or suffer a recovery, to enable her to bar the entail, for advancing herself on marriage; but as it is in the discretion of the court to permit it, or not, as they shall judge fit, under the circumstances of the case, see *Doe v. Rawling*, 2 Barn. and Ald. 450, an act of parliament is now usually had recourse to for this purpose.

But although an infant feme may bar herself, by agreement before marriage, of her dower, *E. Buckingham v. Drury*, 3 Bro. P. C. 492; *Chitty v. Chitty*, 3 Ves. 547, or freebench, *Walker v. Walker*, 1 Ves. 54, and thirds, *Caruthers v. Caruthers*, 4 Br. C. C. 500; *Smith v. Smith*, 4 Ves. 189; yet this is only where some provision is made for her by the husband in lieu of that which the law would otherwise have given her; and such provision must be certain and not contingent or precarious; *Caruthers v. Caruthers*, 4 Bro. Ch. Ca. 499; she may else, on surviving her husband, make her election to take whichever she pleases; see *Smith v. Smith*, 5 Ves. 189; *Glover v. Bates*, 1 Atk. 439; unless after his death she conclude herself by doing some act in confirmation of the settlement, which will be construed to amount to an election, *Archer v. Pope*, 2 Ves. 525; *Harvey v. Ashley*, 3 Atk. 616, unless it be done unadvisedly and in ignorance of her right to avoid it; *Broderick v. Broderick*, 1 P. Wms. 239; *Pusey v. Desbourie*, 3 *ib.* 320; *Soden v. Soden*, cited 13 Ves. 119. This provision need not, however, it should seem, be wholly (if at all) out of land; see *E. Buckinghamshire v. Drury*, 5 Brow. P. C. 570, 4 Brow. Ch. Ca. 505; *Chitty v. Chitty*, 3 Ves. 545; nor is it necessary that it should be of equal amount

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Articles.Recital of lady's
property.

of , or thereabouts, of the second part, (*the lady's father, or guardian*) of, &c. , father or guardian, (1) (*as the case may be*) of the said (*intended wife*) of the third part, and (*trustees*) of, &c. of the fourth part. WHEREAS the said (*intended wife*) is seised of, or otherwise entitled to her and her heirs, under or by virtue of the last will and testament of , late of ,

with the law's provision, *Chitty v. Chitty, ubi sup.* and *Harvey v. Ashley*, 3 Atk. 55. And an infant male may, it should seem, by articles previous to his marriage, equally bar himself of his curtesy out of his wife's lands, and of his right to her personalty; and see *Slocome v. Glubb*, 2 Brow. Ch. Ca. 545; and so also may a male infant make a settlement of his chattel and personal interests; *Durnford v. Lane*, 1 Brow. Ch. Ca. 105; *Caruthers v. Caruthers*, 4 *ibid.* 499; but he cannot, it is held, settle his own real estate (except it be of gavelkind tenure, at the age of 15) under any circumstances, except in exercise of a power; see *Hollingshead v. Hollingshead*, Gilb. Eq. Rep. cited 2 P. Wms. 229; yet it seems strange that an infant male (at the present day) should not have the same power as a female infant has to settle his real as well as his personal estates as a provision for his wife and children, on his marriage; and see 16 Vin. Ab. 486; *Strickland v. Croker*, 2 Ch. Ca. 211; *Hearle v. Greenbank*, 3 Atk. 695, 1 Ves. 298; *Warburton v. Litton*, cited 4 Brow. Ch. Ca.; also Co. Lit. 246, a. n. (1).

Lady, a ward of
chancery.

(1) If the lady be a ward of chancery, say,

"A guardian duly appointed by the high court of Chancery, in pursuance of an order of the said court hereinafter recited."

If the marriage cannot be had without the consent of trustees, which restriction is good; *Lloyd v. Brunt*, 3 Mer. 116; *Malcolm v. Callagan*, 2 Mad. 349; the court will, if they refuse, refer it to the master to inquire as to the propriety of the marriage; *Geldsmid v. Geldsmid, Cooper*, 225.

deceased, (*or as the case may be*) to certain lands and hereditaments situated at , in the county of , and hereinafter more particularly described, as for an estate in fee-simple in possession, [and is also possessed of or entitled to certain leasehold premises, situated at , and likewise to the sum of £ , three per cent consolidated bank annuities.] AND WHEREAS a marriage hath been agreed upon (1) and is intended to be shortly

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Marriage Articles.

Contract of marriage.

(1) If the lady be a ward of the court of chancery, recite the proceedings in the court preparatory to the intended marriage, as,

Lady, a ward of chancery.

“AND WHEREAS by a decree or decretal order of the said court, made on the day of , in a cause then and now there depending, entitled , against ; It was amongst other things ordered, that the said (*intended husband*) should be at liberty to lay proposals before Mr. , the master to whom the said cause was referred for a settlement upon the said (*intended wife*) and the issue of the said marriage. AND WHEREAS the said (*intended husband*) in obedience to the said decree or decretal order, on or about the day of , laid before the said master proposals for the said settlement, which proposals were approved of by the said master, as appears by a separate report made in the said cause, bearing date on or about the day of . AND WHEREAS the said (*one of the trustees*) hath been named by the said (*intended husband*) and the said (*other trustee*) by the said (*father or guardian*) on the behalf of the said (*intended wife*) and approved of by the said master, as trustees for carrying the said settlement into execution. AND the said master hath also approved of these presents, as proper articles of agreement for a settlement of the lands and hereditaments of the said (*intended wife*), to be made on her attaining the age of twenty-one years, as appears by

Recital of proceedings in chancery.

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MENTS.

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Provision to be
made for in-
tended wife.Settlement of
personalty of
even date.

solemnized between the said (*intended husband*) and (*intended wife*), with the consent and approbation of the said (*father or guardian*). AND WHEREAS upon the treaty for the said intended marriage, it was agreed by and between the said (*father or guardian*) on the part of the said (*intended wife*), and by the said (*intended husband*) respectively, that in consideration of the fortune which would belong to the said (*intended husband*) in right of his marriage, in case the same should take effect, the said (*intended wife*) should receive during the joint natural lives of herself and the said (*intended husband*), the yearly sum of £ for or by way of pin-money; and also the yearly sum of £ in lieu thereof, in case she should survive the said (*intended husband*) by way of jointure, and in bar of dower, during the remainder of her natural life. AND also that the said lands and hereditaments should, upon her attaining the age of twenty-one years, be settled and assured to, upon, and for the uses, trusts, and purposes hereinafter expressed. AND WHEREAS by indentures of lease and release already prepared and engrossed, the lease bearing date the day next before the release, and the release bearing even date herewith, and expressed to be made between, &c.; the said (*intended hus-*

a certificate of the said master, written in the margin of the skin of these presents, and his initials placed in the margins of the several other skins hereof."

band) hath secured to the said (*intended wife*) the said respective clear yearly sums of £ and £ , in the events aforesaid, to the satisfaction of the said (*father or guardian*). Now

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Marriage Articles.

THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement on the part of the said (*intended wife*), and for and in consideration of the said intended marriage, and of the settlement or provision so made for the said (*intended wife*) as aforesaid, and such further provision for her and the issue, if any, of the said intended marriage, as hereinafter is expressed (1); she the said (*intended wife*) for herself, her heirs, executors, and administrators, by and with the privity and approbation of the said (*father or guardian*), testified by his being a party to, and signing and sealing these presents (2), doth hereby promise, declare, and agree, that all and every the sum and sums of money, stocks, funds, and securities, and other the chattel and personal estates and interests, and rights, credits, and expectances, which she the said (*intended wife*) now is, or hereafter during the said intended marriage, shall or may be possessed of, or entitled to, in possession, expectancy, contingency, or otherwise (3), except as

WITNESS,
That in consideration of the intended marriage,

intended wife agrees that her personalty, &c. shall belong to husband.

(1) The competency of the settlement made for the wife and children, either out of the property of the husband or wife, is a principal ground of support for the future settlement; see *ante*, p. 251, n. (1). Competency of provision.

(2) See *ante*, p. 251, n. (1).

(3) An infant feme may, upon her marriage, settle her personal as well as real property; *Harvey v. Ashley*, 9 Atk. 606;

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MENTS.

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Stipulation by
intended hus-
band and wife
to settle the
estates to the
uses after men-
tioned, on her
attaining
twenty-one.

hereinafter is mentioned, shall, from and immediately after the solemnization of the said marriage, be and become the sole property of, and belong to the said (*intended husband*) as the absolute purchaser thereof, although the same or any part thereof shall not have been reduced into possession, or come to his hands, during the lifetime of her the said (*intended wife*); and that when and so soon as the said (*intended wife*) shall attain the age of twenty-one years, or at any time or times thereafter, when thereunto required by the said (*intended husband*) his executors, administrators, or assigns, she the said (*intended wife*) shall and will, do, execute, and assent to all such acts, proceedings, matters, and things whatsoever, as by the counsel in the law of the said (*intended husband*), or of his executors, administrators, or assigns, shall be deemed requisite for vesting the same in him and them, to and for his and their own proper use and benefit. AND she the said (*intended wife*) for herself and her heirs, executors, and administrators, so far as the rules of law or of equity will permit, doth hereby further promise, declare, agree, and engage; and the said (*intended husband*) for himself, his heirs, executors, and administrators, doth

Williams v. Williams, 1 Brow. Ch. Ca. 152; and whether in possession or in expectancy, so that it was within the view and contemplation of the parties, *ib.*; and see *post*, p. 259, n. (1).

And an agreement to settle all the personal estate which either party shall at any time during the coverture be possessed of, is good; Lewis v. Madocks, 8 Ves. 150.

hereby fully and absolutely covenant, promise, declare, and agree, with and to the said (*trustees*) their heirs and assigns, in the manner following, (that is to say) that in case the said intended marriage shall take effect, and the said (*intended wife*) shall live to attain the age of twenty-one years they the said (*intended husband*) and (*intended wife*) respectively, (each of them separately stipulating and agreeing for himself and herself only, and their respective heirs, executors, and administrators), shall and will, at the request of the said (*trustees*) or of the survivor of them, or the heirs of the survivor, or of their or his assigns, or of other the trustees or trustee for the time being, under or by virtue of these presents, make, do, execute, and perfect, and join, concur in, and assent to the making, doing, executing, and perfecting, at the cost and expense of him the said (*intended husband*), his executors or administrators, all and every such act and acts, deed and deeds, conveyances, assurances, matters, things, and proceedings in the law whatsoever, whether by fine or fines, common recovery or common recoveries, or otherwise howsoever, which shall be necessary or proper, or as the counsel in the law of the said trustees or trustee shall require or advise, for conveying, settling, and assuring, ALL (1) and singular

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(1) Not only land, but every other species of property which can be made the subject of contract—as chattel and personal interests—estates legal and equitable—in possession or reversion—holden in severalty, joint-tenancy, or in common—vested, What may be the subject of articles.

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the messuages or tenements, lands, and hereditaments, of her the said (*intended wife*), situated, lying, and being at , in the county of , and so devised to her by the said in part recited will of the said , deceased (*or as the case may be*), as aforesaid; AND also all and singular other the freehold and copyhold manors, messuages, lands, tenements, hereditaments, and real estates whatsoever, which she the said (*intended wife*) now is, or at any time during the said intended coverture, shall or may be seised of, or entitled to, within the United Kingdom of Great Britain and Ireland, To the several uses upon the several trusts, and for the several ends, intents, and purposes, and under and subject to the several powers, provisos, conditions, declarations, and agreements, (or as nearly thereto as the natures or properties of the said estates respectively will permit), hereafter limited, declared, or expressed,

contingent, &c. will, in equity, be bound by articles of agreement, made in consideration of marriage; see *Theobalds v. Duffy*, 2 P. Wms. 608, and cases there cited; although not assignable at law; *James v. Roe*, 3 Durnf. and E. 93; *Gurnell v. Wood*, Willes, 211; but not estates tail *ex provisione viri*, 11 Hen. 7, c. 21, nor those of which the reversion is in the crown; 34 and 35 Hen. 8, c. 20, certain offices relative to the administration of justice, &c.; 5 and 6 Ed. 6, c. 16; and see *Harrington v. Du Chatel*, 1 Brow. Ch. Ca. 124; so it is conceived of ecclesiastical preferments, 13 Eliz. c. 20, and the half-pay of officers of the navy and army; see *Flarty v. Odum*, 3 Durnf. and E. 681; *Lidderdale v. D. of Montrose*, 4 *ib.* 248; and see *ante*, Vol. V. No. VIII. p. 190, n. (2); see also Atherl. on *Settlements*, Chap. III.

of or concerning the same (that is to say) (1), To THE USE of the said (*intended husband*) and his assigns, during the term of his natural life (2), without impeachment of waste, and from and after the determination of that estate by any means, in his life-time, TO THE USE of trustees to be therein named, and their heirs, during the natural life of the said (*intended husband*) in trust by the usual or other proper means to support the contingent remainders and estates thereafter limited, or agreed to be limited from being defeated; and from and after the decease of the said (*intended*

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Marriage Articles.

To the husband for life.

Wife for life.

(1) In order to prevent any doubt afterwards arising as to the particular limitations and provisions to be contained in the settlement in pursuance of the articles, and to guard against the neglect which, in making a more formal settlement, in pursuance of the articles, too often occurs, it is usual, where the property is such as to render the additional expense not a matter of importance, to set them out verbatim, in like manner as they are intended to be in the future settlement.

Limitations set out in articles.

(2) If the wife is to have an annuity paid to her by way of pin-money for her separate use during the lifetime of her husband, a term should be created for that purpose immediately before the limitation to him for life, as,

Annuity to wife during husband's life.

“(That is to say) TO THE USE of trustees in the said settlement to be named, their executors, administrators, and assigns, for the term of ninety-nine years, to commence from the solemnization of the said intended marriage, without impeachment of waste, upon and for the trusts and purposes, and subject to a proviso or agreement thereafter to be contained, and hereinafter more particularly referred to concerning the same; and from and after the determination of the said term, To THE USE of the said (*intended husband*) and his assigns,” &c. *as above*.

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husband) To THE USE of the said (*intended wife*) and her assigns, during the term of her natural life, without impeachment of waste, by way of jointure and in full bar (1) and satisfaction of

Rent charge to
wife, on sur-
viving husband.

(1) The settlement of freehold lands of the husband upon the wife will be a bar of her dower, by virtue of 27 Hen. 8, c. 10, even though she be an infant; *Harvey v. Ashley*, 3 Atk. 602; *Buckingham v. Drury*, 2 Ed. 60, 5 Brow. P. C. 492. 530; but *contra*, *Drury v. Drury*, 2 Eden. 39, (which see) where it is said that the stat. 27 Hen. 8, extends to adult women only and not to infants, and therefore that, notwithstanding a jointure on an infant, she may waive it, and elect to take her dower; (but not a settlement of copyholds; *Gilb. Ten.* 182; *Rowden v. Malster*, Cro. Car. 44); and see *ante*, p. 251, n. (2); and where such lands are stipulated to be of a certain annual value, the value is to be intended at the death of the husband, when her interest commences; *Lady Londonderry v. Wayne*, 2 Eden. 170; but it is generally more convenient for the wife to have an annuity secured to her for her life, in the event of her surviving her husband, than a life estate in the settled premises; in which case, instead of the limitation in the text, to the wife for life, say,

“AND from and after the decease of the said (*intended husband*), Then to the end and intent that she the said (*intended wife*) and her assigns, if she shall be then living, shall receive, out of the said hereditaments, during the remainder of the term of her natural life, a yearly rent-charge or clear annual sum of £ , for or in lieu of a jointure, and in bar of dower, free-bench, and thirds, in respect of any real estates of him the said (*intended husband*), to be paid by equal quarterly payments on the day of , the day of , the day of , and the day of , in each year, free of all deductions whatsoever, and the first payment thereof to be made on such of the said days as shall happen next after the decease of the said (*intended husband*); with the usual and other sufficient powers of distress for compelling payment of the said yearly rent or annual sum,

all dower and thirds at common law or otherwise; To THE USE of the said (*trustees to preserve, &c. as before*) (1) and from and after the decease of the survivor of them the said (*intended husband*) and (*intended wife*) (2), To THE USE of the first son of the said (*intended wife*) by the said (*intended husband*) her intended husband lawfully to be begotten, and the heirs male of the body of such first son lawfully issuing (3), and in default

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Marriage Articles.

Remainder to first and other sons of the marriage in tail male.

in case the same shall be in arrear for twenty-one days next after either of the days aforesaid, and of entry for the like purposes in case the same shall be in arrear for the space of forty days next thereafter."

(1) Add as above, if it be her estate, but otherwise not necessary; see *post*, p. 299, n. (†), p. 306, n. (1).

Term for children's portions.

(2) If it be intended that the daughters of the marriage should have portions raised out of the settled estates, subject to their mother's jointure (see *ante*, p. 270), add here,

"AND subject to the said yearly rent-charge or annual sum of £ , and to the remedies for the recovery thereof, To THE USE of other trustees in the said settlement to be named, their executors, administrators, and assigns, for the term of one thousand years, to commence from the decease of the said (*intended husband*) without impeachment of waste, upon and for the several trusts, intents, and purposes, and subject to the proviso hereinafter more particularly referred to, and thereafter to be contained concerning the same; And from and after the expiration of the said term, and in the mean time subject thereto, and to the trusts thereof, To THE USE of the first son of the body," &c. *as above*.

(3) It has been cursorily noticed what may be the subject of a general settlement; but there are some things which, although they may be made a provision for a wife and children, yet cannot be limited in tail; for nothing can be entailed but what comes within the meaning of the word "tenement" in the stat. *de donis*,

What may be entailed.

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Articles.

To the first and
other daughters
in like manner.

of such issue, To THE USE of the second, third, fourth, fifth, and all and every other the son and sons of the said (*intended wife*) by him the said (*intended husband*) to be begotten, severally, successively, and in remainder one after another, as they and every of them shall be in priority of birth and seniority of age, and the several and respective heirs male of the body and respective bodies of all and every such son and sons lawfully issuing, the elder of such sons and the heirs male of his body issuing being always preferred, and to take before the younger of them, and the heirs male of his and their body and respective bodies issuing; And for default of such issue, To THE USE of the first daughter (1) of the said (*intended*

(Westm. 2, 13 Edw. 1,) viz. according to Coke, “corporate inheritances, which are or may be holden, inheritances issuing out of those inheritances, or concerning or annexed to or exerciseable within the same, though they lie not in tenure;” see Co. Lit. 202, 60 a.; but although nothing but what is a tenement can be the subject of a strict entail, yet other things may be limited to a man or woman, and the heirs of his or her body; in which case the estate is denominated a conditional fee, if the property be of an inheritable nature, not lying in tenure, and a *quasi* intail, if of a chattel or personal nature; see Co. Lit. 20, a. and notes there.

The daughters
as tenants in
common.

(1) The limitation in the text to the first and other daughters of the marriage in tail male, on failure of sons, is not unusual in the settlement of large estates, where there is no collateral heir male of the family; but the more usual way is, on failure of sons, to limit the estate to the daughters of the marriage as tenants in common in tail general, in which case say,

“To THE USE of all and every the daughters of the said (*intended wife*) by the said (*intended husband*) her intended husband, lawfully to be begotten, equally to be divided be-

wife) by the said (*intended husband*) to be begotten, and the heirs male of the body of such daughter lawfully issuing; and for default of such issue, To THE USE of the second, third, fourth, fifth, and all and every other the daughter and daughters of the said (*intended wife*) by the said (*intended husband*) to be begotten, successively, and in remainder one after another, as they and every of them shall be in priority of birth and seniority of age, and the several and respective heirs male of the body and respective bodies of all and every such daughter and daughters lawfully issuing, the elder of such daughters, and the heirs male of her body, being always preferred, and to take before the younger of them, and the heirs male of her and their body and respective bodies issuing; and in default of such issue, To THE USE of the first son of the said (*intended wife*) by the said (*intended*

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To the first and other sons of the marriage in tail general.

tween them, (if more than one) share and share alike as tenants in common, and of the several and respective heirs of the body and bodies of such daughter or daughters, lawfully issuing; and in case there shall be a failure of issue of the body or bodies of any or either of such daughters, then as to the part or share, or intended part or share, of such of them who shall fail of having issue, To THE USE of the survivors or survivor of them in the manner aforesaid; and if there shall be but one such daughter of the said (*intended wife*) by the said (*intended husband*) or all of them (being more than one) shall die, without lawful issue, then To THE USE of such only daughter, or only surviving daughter, and the heirs of her body issuing; and for default of such issue To THE USE of A. B." &c. as above.

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MENTS.

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To the daugh-
ters in like
manner.

husband) her intended husband lawfully to be begotten, and the heirs of the body (1) of such first son lawfully issuing; and for default of such issue, To the second, third, fourth, fifth, and all and every other the son and sons of the said (*intended wife*) by the said (*intended husband*), her intended husband lawfully to be begotten, severally, successively, and in remainder one after another, as they and every of them, shall be in priority of birth and seniority of age, and the several and respective heirs of the body and respective bodies of all and every such son and sons lawfully issuing, the elder of such sons and the heirs of his body, being always preferred, and to take before the younger of such son and sons, and the heirs of his and their body and respective bodies issuing; and for default of such issue, To THE USE of the first daughter of the said (*intended wife*) by the said (*intended husband*) to be begotten, and the heirs of the body of such first daughter lawfully issuing; and in default of such, To THE USE of the second, third, fourth, fifth, and all and every other the daughters and daughter of the said (*intended wife*) by the said (*intended husband*) her intended husband to be begotten, successively, and in remainder one after another, as they and every of them shall be in priority of

Tail male and
tail general.

(1) A juvenile student may, probably, at first conceive, that this and the subsequent limitations are the same as those which have preceded them; but he will perceive, by more attention, that these are to the children of the marriage in tail *general*, whilst those are in tail *special*.

birth and seniority of age, and the several and respective heirs of the body and respective bodies of all and every such daughter and daughters lawfully issuing, the elder of such daughters, and the heirs of her body, being always preferred, and to take before the younger of such daughters, and the heirs of her and their body and respective bodies issuing (1); and in default of such issue, To THE USE of A. B. of , brother (2) of the

SETTLE-
MENTS.

Marriage
Articles.

Collateral
relations.

(1) Where the intended wife is under age, it is generally required by the court of Chancery (if she be a ward of that court) that the limitations of her estates should provide for the possibility of her future marriage; see *Wells v. Price*, 5 Ves. jun. 398, in which case add,

Future
marriage.

“AND in default of such issue, To THE USE of the first son of the body of the said (*intended wife*) by any after-taken husband or husbands, with whom she may happen to intermarry after the decease of the said (*intended husband*) lawfully to be begotten, and the heirs male of the body of such first son lawfully issuing; and for default of such issue,” &c. &c. (*to the use of the other sons and daughters of any second marriage, in tail male, and tail general, precisely as in the limitations to the issue of the present marriage, if so intended by the parties*).

See further limitations, if required, *post*, No. II. p. 307, *et seq.* in margins.

Further limita-
tions.

(2) Although the persons claiming under marriage articles be remote objects of the settlement, yet if they be nearly akin, even collaterally, to the settler, as brothers, uncles, &c. the court will decree an execution of the articles in their favour; *Jenkins v. Kemysh*, Hard. 398; 1 Lev. 150. 237, S. C.; 1 Chan. Ca. 103, S. C.; *Finch v. Earl of Winchelsea*, 1 P. Wms. 277; *Vernon v. Vernon*, 2 *ib.* 594; *Stephens v. Trueman*, 1 Ves. 73; *Goring v.*

Limitations to
collateral rela-
tions.

SETTLEMENTS.

Marriage
Articles.

said (*intended wife*) and his assigns, during the term of his natural life, without impeachment of waste; AND from and after the decease of the said A. B. TO THE USE of such person and persons, for such estate and estates, and upon and for such trusts, intents, and purposes as she the said (*intended wife*), (notwithstanding her intended coverture) by any deed or other instrument in writing (with or without power of revocation and of new appointment) to be sealed and delivered by her in the presence of, and attested by two or more credible witnesses, or by her last will and testament, or writing purporting to be such, or by any codicil or codicils thereto, to be respectively signed and published by her in the presence of and attested by three or more credible witnesses), shall limit, appoint, give, de-

Nash, 3 Atk. 188; Ramsden v. Hylton, 2 Ves. 304; Hall v. Lamb, 2 Ed. 292; for *per* Hale, Ch. in the first of these cases, "the consideration of marriage and of the marriage portion, will run through all the estates raised by these settlements, although the marriage be not concerned in them." But this, it should seem, must be understood to apply only where there are other parties to the settlement who may be supposed to part with some interest, and as such to be considered in the nature of purchasers of those limitations in favour of their near of kin; for, as was observed by Lord Macclesfield in Osgood v. Strode, 2 P. Wms. 255, "the marriage and marriage portion will naturally support such limitations only as are to the husband and wife, and their issue, which is all that can be presumed to be stipulated for by the wife or her friends;" and see Edwards v. Countess Warwick, 2 P. Wms. 170; Staplehill v. Bully, Prec. Chanc. 223; Roe *dem.* Hamerton v. Milton, 2 Wilson, 356; West v. Errissey, 2 P. Wms. 355; Middleton v. Kenyon, 2 Ves. jun. 391. The efficacy of these articles, with re-

vise, or dispose of the same; and in default of such limitation, appointment, gift, devise, or disposition, (and subject to any such as shall be made thereof) To THE USE of her the said (*intended wife*) her heirs and assigns for ever (1).

SETTLEMENTS.

Marriage Articles.

Remainder to wife in fee.

spect to collateral claimants, is also confined to such as are made before the marriage; for stipulations entered into after marriage, resting in covenant only, will be good only as against the settler himself, and persons claiming under him with notice of the articles, or without having paid a valuable consideration, and not as against *bona fide* purchasers; *vid. Trevor v. Trevor*, 1 P. Wms. 622; *Cornick v. Trapand*, 6 Dow 60; *Pulvertoft v. Pulvertoft*, 18 Ves. 90. Where, however, the question is not between the settler or his representatives, and purchasers, or creditors, but between the representatives only of the party himself, the court will decree a specific performance of the articles against the heir in favour of near collaterals, although not within the marriage consideration; see *Vernon v. Vernon*, 2 P. Wms. 594. And even where the claimants are very remote, yet where part of the articles clearly ought to be enforced, and creditors or *bona fide* purchasers are not prejudiced by it, the court will enforce them rather than "garble and split" agreements; see *Goring v. Nash*, 3 Atk. 190; *Finch v. Earl of Winchelsea*, 1 P. Wms. 277; and see also *post*.

But covenants in favour of strangers are held merely voluntary, and not to be supported by the marriage consideration; *Sutton v. Chetwynd*, 3 Merr. 249.

(1) If the wife is to receive an annuity by way of pin-money during the husband's life, declare here the uses of the term of ninety-nine years, created for that purpose,

Trust of 99 years to raise wife an annuity by way of pin-money.

"AND as to and concerning the said term of ninety-nine years hereinbefore agreed to be limited in use to trustees in the said intended settlement to be named, it is hereby agreed and declared that the same shall be thereby declared to be so limited to them UPON TRUST by or from the rents and profits, or by sale, mortgage, or other disposition of the said premises, or any part thereof, for the said term, or other

SETTLEMENTS.

*Marriage
Articles.*

AND it is hereby agreed and declared, that in the said settlement so to be made as aforesaid, there

lawful ways or means, to raise and obtain the clear yearly sum of £ , for the sole and separate use of the said (*intended wife*) during the joint natural lives of her and the said (*intended husband*) and to pay the same unto her the said (*intended wife*) or to such person or persons, as (notwithstanding her intended coverture) she shall by any writing signed by her in the presence of one or more witness or witnesses from time to time direct, whose receipt shall at all times be an effectual discharge for the same; with a proviso or agreement nevertheless in the said settlement to be contained, that in case and so long as the said (*intended husband*) shall himself pay the said annual sum to her the said (*intended wife*) for her own separate use, or to her appointees or assigns, at the times and in the manner appointed for payment thereof, (and which he shall thereby covenant to pay) the said trust, as to the execution thereof, shall be suspended; And a further proviso or agreement that upon the decease of either of them the said (*intended husband*) and (*intended wife*) and payment of all arrears of the said sum of £ , the said term of ninety-nine years shall cease."

Settlement to contain power of leasing.

If the wife is to have an annuity secured to her by way of jointure on her surviving her husband, declare the trusts of the one thousand years term as follows :

Trust of 1000 years term, to raise wife annuity by way of jointure.

"AND as to and concerning the said term of one thousand years, so agreed to be limited in use to other trustees, in the said intended settlement to be named, it is hereby declared and agreed, that the same shall, in the said intended settlement, be declared to be UPON TRUST in the first place for better securing to the said (*intended wife*) and her assigns, the said yearly rent-charge or sum of £ for her life, in case she shall survive the said (*intended husband*) her said intended husband, as and when the same shall become payable, and for that purpose by entry upon,

shall be contained a power for the said (*intended husband*) and his assigns during his life, and after

SETTLEMENTS.

Marriage
Articles.

and receive of the rents and profits of, or by sale, mortgage, or other disposition of the premises to be therein comprised, or any part thereof, during the said term, or by any other lawful ways or means, as often as the said annual sum shall be sixty days in arrear, to raise and pay the same and all expenses attending the execution of the said trust; And in the next place UPON TRUST, by all and every or any of the same ways and means, after the decease of the said (*intended husband*) or in his life-time by his consent, but subject to the said yearly rent-charge of £ to raise and obtain the sum of £ , for the portion of any younger child (not being an only son), if there shall be but one such child, of the said intended marriage; and if there shall be two such children, then the sum of £ , for the portions of such two children; and if there shall be three or more such children, then the sum of £ , for the portions of such several children; the same to be paid to such child or children, at such times, and in such shares and proportions (if more than one) and either wholly or partially to the exclusion of any one or more of them, and subject to such conditions and limitations over for the benefit of any or either of them, as the said (*intended husband*) by any deed or deeds, with or without power of revocation, to be sealed and delivered by him in the presence of two or more credible witnesses, or by his last will and testament, to be by him signed and published in the presence of and attested by three or more credible witnesses, shall from time to time direct or appoint; and in default of such direction or appointment, and subject to any such as shall be made, to be paid to, or otherwise become a vested interest in the said child or children, being a son or sons at the age of twenty-one years, or being a daughter or daughters at that age or marriage, which may first happen after the decease of the said (*intended husband*); with a further proviso in the said settlement to be contained, that if any or either of the said

And portions
for younger
children.

SETTLEMENTS.

Marriage
Articles.

his decease for the said (*intended wife*) (him surviving) and her assigns, during her life, and after

children, being a son or sons, shall by the death of an eldest brother or brothers, become an eldest or only surviving son, and thereby be entitled to the hereditaments agreed to be settled upon the first son of the said intended marriage, or being a son or sons, or daughter or daughters, shall die before their respective portions shall become vested, then the intended portion or portions of the child or children so dying, or becoming an eldest, or only surviving son, shall go to the survivors or survivor of such children, in like manner in all respects as if the same had been his, her, or their original share or portion. AND in the said intended settlement shall moreover be contained a power for the said trustees, after the decease of the said (*intended husband*), or in his life-time by his consent, (but subject as aforesaid) by any of the ways or means aforesaid, to raise and obtain any part of the portion or portions of the said child or children, which shall be deemed expedient for the maintenance and education, or the advancement in the world of such child or children, during their respective minorities. AND also a proviso or declaration, that after the trusts and purposes aforesaid shall be fully satisfied, the said term of one thousand years shall cease."

Part leaseholds.

If any part of the premises to be settled be leasehold, and they are intended to be comprised in the future settlement, add,

"AND it is hereby further agreed, that all and singular the leasehold premises hereinbefore mentioned, with the appurtenances, shall be assigned to two more trustees, for the remainder of such term or terms of years or other interests as shall be then to come and unexpired, or as the said (*intended wife*) shall or may have, or be entitled to or possess therein, upon such trusts, as that the same may go along with the freehold estates hereby agreed to be settled, and the rents and profits thereof be had, received, and taken by the same person or persons, and be applicable to

both their deceases, for the trustees therein to be named for preserving contingent remainders, during the minority of any child or children, who by virtue thereof shall be entitled in possession to the said settled hereditaments, to demise or lease (1), (by indenture sealed and delivered by

SETTLEMENTS.

*Marriage
Articles.*

the same purposes, and be subject to the same powers, provisos, and agreements as are hereby agreed to be limited, and are expressed and declared concerning the said freehold premises, or as nearly thereto as the rules of law and equity will permit, but so as that no person who shall be entitled to an estate tail in such freehold premises shall have an absolute interest in the said leaseholds, until he or she shall attain the age of twenty-one years, or die before that age leaving issue."

See *Trafford v. Trafford*, 3 Atk. 347. *Vaughan v. Vaughan*, 3 Brow. C. C. 101. *Lincoln v. D. Norfolk*, 12 Ves. 218. *Rob. on Wills*, 585, 630. *D. Newcastle v. Lady Lincoln*, 3 Ves. 387, also, 12 *ib.* 225, as to settlements of chattels.

(1) These powers of leasing, &c. where the property is small, *Brevity* may for brevity sake be omitted, and the following clause introduced in their stead; but as articles made before marriage are frequently, after the marriage has taken place, but little thought of, it is in general better that the powers as well as the limitations should be fully set out: see *ante*, p. 261, n. (1).

"AND it is hereby further agreed and declared, that in the settlement so to be made as aforesaid, there shall be contained the usual and other proper powers for the maintenance, education, and advancement of the children of the said intended marriage, and for leasing, selling, exchanging, and enfranchising the hereditaments hereby agreed to be settled as aforesaid, with proper clauses and declarations for explicitly directing and fully enabling the trustees, in such settlement to be named, to execute and perform the several trusts to be in them respectively reposed, touching the application of the money in case of

SETTLEMENTS.

*Marriage
Articles.*

him, her, or them, in the presence of two or more credible witnesses) all or any part of the same hereditaments for any term of years, not exceeding twenty-one years, and to take effect in possession at the time, or within six months after the making thereof, or for any other term of years determinable with any life or lives, not exceeding three in number, and then in being, at the best yearly rent that can be reasonably obtained for the same, to be incident to the immediate reversion of the same premises, without any fine or premium exceeding ten shillings, being taken for the making thereof, or any permission to commit waste, and under all usual covenants on the part of the lessee, and also a covenant not to assign without licence, and subject to a condition of re-entry for non-payment of the rent within twenty-one days after the same shall thereby be made pay-

such sale, and the settlement of after-purchased lands and hereditaments, or such as shall be taken in exchange or enfranchised; and also the usual provisos or clauses for making the receipts of trustees a discharge to purchasers and others, and for the indemnity of the trustees; and for authorising and empowering them to deduct and retain their expenses; and also all such further and other clauses, declarations, and powers, provisos, and agreements, as from the nature and circumstances of the settled hereditaments, the deaths of parties, and other events, as the counsel in the law of the said (*trustees*) or the survivors or survivor of them, his executors or administrators, or their or his assigns, shall think necessary or proper, and shall advise for the said purposes, or any or either of them."

able, and the several lessees executing counterparts of their respective leases. AND also a power for enabling the same trustees, at any time during the joint lives of the said (*intended husband*) and (*intended wife*) or the life of the survivor of them, with his or her consent, to be testified in writing under their, his, or her hands and seals, or hand and seal; and after the decease of the survivor of them, then of the sole authority of the said trustees, during the minority of any issue of the said marriage who shall be entitled in possession to the hereditaments hereby agreed to be settled, to make sale thereof, in such manner as they shall think proper, or to convey the same in exchange for other hereditaments, to be situated in England or Wales, for such price in money or other recompense in value, as to them shall seem reasonable, and to give effectual discharges for the same; BUT subject to a further trust or declaration therein to be contained, that the monies arising from every such sale shall, with all convenient speed, be laid out (with such consent or such sole authority, as aforesaid) in the purchase of other hereditaments in fee-simple in possession, to be situated in England or Wales, to be settled (as also those which shall be taken in exchange) to, for, and upon the same or like uses, trusts, and purposes, as are hereby expressed relative to the lands or hereditaments so to be made saleable and exchangeable. AND that until the money so to arise can be laid out in such purchase, the same shall be invested on some

SETTLEMENTS.

Marriage Articles.

Powers of sale and exchange.

Money to arise by sale, to be laid out in purchase of other lands.

And in the mean time invested on government security.

SETTLEMENTS.

Marriage Articles.

The dividends to belong to the persons entitled to the rents.

Power to revoke the present articles.

parliamentary security of the United Kingdom, with power for the said trustees (with such consent and approbation, or of their own authority, as aforesaid) to vary and change the same as shall by them be thought expedient; and the interest, dividends, and annual proceeds thereof to be paid to such persons, and be applied to such purposes, as the rents and profits of the hereditaments to be purchased therewith, would belong or be applicable, if such purchase had actually been made.

PROVIDED ALWAYS nevertheless, and it is hereby expressly declared and agreed, that notwithstanding any thing hereinbefore contained, it shall be lawful for the parties hereto of the first, second, and third parts, or for the major part of them, in case of any difference between them, at any time within the space of six calendar months next after the said (*intended wife*) shall have attained the age of twenty-one years, and before or at the time of the execution of the said settlement, to add to, or otherwise vary or alter, or cause to be added to, or varied or altered, all or any of the limitations hereby agreed to be made of or concerning the hereditaments so hereby covenanted to be settled as aforesaid, or any part thereof (1), subject only and without prejudice

Authority for varying the future settlement necessary.

(1) Unless there be an authority for varying the future settlement, any deviation from the articles will be considered as a settlement after marriage, and therefore voidable against purchasers and subsequent creditors; but if founded upon the previous articles, it will be supported by the marriage contract;

to the provision hereby agreed to be made for the said (*intended wife*). AND also to insert or cause to be inserted in the said settlement, a power for the said (*intended husband*) and (*intended wife*) (notwithstanding her coverture) at any time, and from time to time, during their joint lives, by writing under their respective hands and seals (to be executed in the presence of and attested by two or more credible witnesses) to revoke all or any of the uses or trusts therein to be contained, and to limit or declare any such new, further, or other uses or trusts of or concerning the said hereditaments, or any part thereof, as they shall think proper (1). AND it is hereby further agreed, that there shall likewise in the said settlement be contained a proviso, direction, or agreement, that in case the trustees thereof for the time being, or any or either of them shall die, or be desirous to be discharged from, or shall neglect or refuse, or become incapable to act in the trusts thereby reposed in them, or shall be about to reside beyond

SETTLEMENTS.

Marriage Articles.

And future settlement.

Power of appointing new trustees.

see *Griffin v. Stanhope*, Cro. Jac. 454 ; *Lavendon v. Blackstone*, 2 Lev. 146 ; *Jason v. Jervis*, 1 Vern. 285.

If the settler be entitled to a moiety or other portion only of the premises, add, Moiety, &c.

“AND also a power with such consent, or by such sole authority as aforesaid, to make partition or division of all or any of the said hereditaments and premises in severalty, with any person or persons who may be entitled to any undivided part or parts of or in the same.”

(1) Various other powers, &c. are sometimes requisite to be inserted in articles of settlement, which may be found by reference to No. II. *post*, p. 305, *et seq.* in margins. Other powers.

SETTLEMENTS.*Marriage Articles.*

the sea, it shall be lawful for the said (*intended husband*) and (*wife*) his intended wife, and the survivors of them, during the lives and life-time of them, or the survivor of them, by any writing under their, his, or her hand, or respective hands; and after both their deaths, for the remaining or other trustees or trustee for the time being, of their or his own authority, to appoint any other person or persons to be a trustee or trustees of the purposes of the said settlement, in the place of any such resigning or other trustees or trustee aforesaid; and the said trust estates and premises shall thereupon be conveyed and transferred in such manner as that the same may be effectually vested in such new and such former trustees or trustee, or in such new trustees only as the case may require, to, upon, and for the several uses, trusts, and purposes which are hereby, or shall or may be thereby, declared concerning the same.

Trustees to be answerable for their own respective acts only.

And to be repaid expenses.

Trustees' expenses.

AND likewise a declaration that none of the said trustees shall be in any respect answerable for each other, nor be responsible for any loss which may happen to the said trust premises in the execution of the said trusts, unless the same happen through their own respective wilful default. AND also that every of them shall have and be paid out of the trust estate, all reasonable costs and expenses, and other just allowances (1) (to be

(1) Trustees are entitled to all reasonable expenses beyond taxed costs, although not expressly provided for by the settlement; see *Fearn v. Young*, 10 Ves. jun. 184; but it is in general a satisfaction to them to have their expenses expressly provided for.

reckoned as between attorney and client) in the execution of the said trusts. AND it is hereby moreover agreed and declared, that in the said intended settlement so to be made as aforesaid, there shall also be inserted and contained all such further and other trusts, powers, provisos, conditions, clauses, declarations, and agreements, as in the opinion of the counsel in the law of the said (*trustees*) or the survivor of them, his heirs or assigns, shall be deemed necessary or advisable for the purpose of carrying these presents and the said intended settlement into effect, according to the true intent and meaning of the same and of these presents (1). AND it is hereby lastly declared and agreed, that in the mean time, and until such settlement shall be made, all and singular the said hereditaments and premises shall be bounden by these presents, and be subject and

SETTLEMENTS.

Marriage Articles.

Other provisos, &c. to be inserted.

(1) There may here be added, if desired, a proviso for settling any difference of opinion which may subsist between the parties respecting the additional provisions to be inserted in the settlement,

Reference to third counsel.

" PROVIDED nevertheless, that in case the said (*intended husband*) and the said (*intended wife*) or either of them, shall in writing express their, his, or her disapprobation of any clause, proviso, or declaration proposed by the counsel of the said trustees or trustee, to be inserted in the said settlement in addition to or in variance of those hereby expressly agreed to be inserted, then the same shall be referred to the determination of his majesty's attorney-general or solicitor-general (at the option of the dissenting party) for the time being, whose opinion thereon shall be final and conclusive upon all persons interested therein."

SETTLEMENTS.Marriage
Articles.

liable to the trusts, intents, and purposes hereinbefore declared, expressed, or intended, concerning the same, in like manner as if the said settlement had been executed and perfected, and the rents, issues, and profits, and dividends, and interest of the said premises respectively be paid, applied, and disposed of accordingly. IN WITNESS (1), &c.

Other provisions.

(1) See various other limitations and provisions, which may be covenanted to be inserted in the future settlement, if required by the parties, *post*, No. II. p. 307, *et seq.* in the margins.

SETTLEMENTS.

MARRIAGE.

Settlement of
Freeholds.
(Full Form.)

No. II.

*Settlement of Freehold Lands, &c. the Estate of the
Husband, in strict Limitations (1).**Variations where part or the whole is the Estate of the
Wife.**Where part of the Estate is Copyhold.**Where part is Leasehold.**Where the Estate is settled by the Father of the Hus-
band or Wife.**Where the Owner is Tenant in Tail or for Life.**Where the Settlement is by Father Tenant for Life, and
his Son Tenant in Tail.**Where the Owner is possessed of a Moiety or other Por-
tion only of the Estate.**Where he is entitled in Remainder or Reversion.**Where he took the Estate to himself and a Trustee to
prevent Dower.**Where the Settlement is after Marriage, either singly or
in pursuance of preliminary Articles.*

THIS INDENTURE of parts, made the

(1) By strict settlement is meant a settlement so framed as to put it out of the power of the parents to bar their issue, by fine or recovery; the usual plan of which is to limit the estate to the use of the husband for his life, remainders to trustees to support contingent estates, remainder to his wife for life; remainder to other trustees for raising portions for younger chil-

Strict settle-
ment.

SETTLEMENTS.**MARRIAGE.**

*Settlement of
Freeholds.
(Full Form.)*

day of _____, in the _____ year of the reign
&c. and in the year of our Lord _____. BE-
TWEEN (1) (*the intended husband*) of, &c.
of the first part, (*the intended wife*) of, &c.
of the second part, (*trustees to uses, &c. to pre-
serve contingent remainders*) of, &c. of the

dren; remainder to the first and other sons in tail; remainder to the daughters as tenants in common, with cross remainders between them on any of them dying before they attain a vested interest in the estate; remainder to the husband in fee.—In which case, the issue are held to take their estate by purchase, i. e. as claiming their provision in the capacity of purchasers for a valuable consideration, without any power of the parents or the trustees to defeat it; for although the trustees for preserving contingent remainders may destroy them by joining with the parent in a conveyance for that purpose, yet they will be compellable by the Court of Chancery, on a suit instituted by the person claiming under those remainders, to purchase lands with their own money, of equal value to the lands sold by them, and to hold them upon the same trusts and limitations as they held the other, if they sold without the purchaser having notice of the limitations, and for a valuable consideration; and if with such notice, or without a proper consideration, the purchaser will hold the lands subject to the trusts of the settlement.

(1) If the father of the intended husband be tenant for life of the estate, and his son tenant in tail under a former settlement, (which are very usual circumstances) make the father, (and if the estate proceed from the mother, and she be tenant for life, the mother also) of the first part; the father or guardian of the intended wife, (if she be under age) of the second part; the husband, of the third part; the intended wife, of the fourth part; the trustees for preserving contingent remainders, of the fifth part; the tenant to the præcipe for suffering a recovery, of the sixth part; the demandant, of the seventh part; the trustees for the husband (if there be separate trustees for the husband and wife) of the eighth part; and the trustees for the wife, of the ninth part.

third part, (*trustees for wife's pin money*) of, &c. of the fourth part, and (*trustees for terms of years for securing jointure and raising portions for younger children, &c.*) (1) of, &c. of the fifth part. WHEREAS (2) a marriage is intended to be shortly had and solemnised between the said (*intended husband*) and the said (*intended wife*). AND WHEREAS (3) the said (*intended husband*) is

SETTLEMENTS.

MARRIAGE.

Settlement of
Freeholds.
(Full Form.)Recital of in-
tended mar-
riage.

(1) It is proper that the trustees for raising portions should be different persons from those to preserve the remainders, as the exercise of the power of entry, &c. given to these latter trustees, might merge the term vested in them for raising portions. Co. Lit. 338, b. note (4). So a forfeiture of the life estate would extinguish the term by occasioning a union of the term with an estate of freehold.

Trustees for
portions.

(2) If the settlement be made in pursuance of previous articles of agreement, it will be proper that such articles should be recited; and this is more particularly necessary, if the settlement be made after marriage in pursuance of such articles, in order to substantiate the settlement against subsequent creditors or purchasers, *vid.* Anon. Prec. Ch. 101. *Dundass v. Dutens*, 1 Ves. jun. 196; and to show its conformity to the articles, without which, it will, with respect to any variance, not be binding on third persons, see *Senhouse v. Earl et Ux.* Amb. 288. *Moore v. Magarath*, 1 Cowp. 9. *Doran v. Roas*, 3 Brow. Ch. Ca. 27. *Payne v. Collier*, 1 Ves. 177. See such recital, *post*, rider (A).

Previous
articles.

(3) Where the father is tenant for life, and the son tenant in tail under a former marriage settlement, recite such settlement.

Husband's fa-
ther tenant
for life.

"AND WHEREAS by an indenture of settlement bearing date the day of , which was in the year , and made or expressed to be made between the said (*father*) of the first part, the said (*mother*) of the second part, and the said (*trustees*) of the third part, (*or as the case was*) purporting to be a settlement made upon the marriage of the said (*father*) with the said (*mother*); the

Recital of hus-
band's father's
settlement.

several messuages, lands, tenements, and hereditaments hereinafter described (1). AND WHEREAS upon the treaty for the said intended marriage, it was agreed that the said messuages and hereditaments should be conveyed, settled, and assured, to the uses, upon the trusts, and for the intents and purposes, and subject to the powers, provisos, and declarations hereinafter expressed concerning the same. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration (2) of the said in-

SETTLEMENTS.

MARRIAGE.

*Settlement of
Freeholds.
(Full Form.)*

WITNESS,
that in consideration of the
intended marriage.

(1) If part of the estate be copyhold, add,

Copyholds.

"AND seised to him and his heirs according to the custom of the manor of _____, of the customary or copyhold lands and hereditaments hereinafter covenanted to be surrendered."

(2) The consideration of marriage runs through the whole settlement, but more especially supports every provision with regard to the husband and wife, *Nairn v. Prowse*, 6 Ves. 752. *Campion v. Cotton*, 17 *ib.* 263; and so high a consideration is marriage esteemed, that it will support a settlement, if made *previously* to marriage, as well against subsequent purchasers as creditors, notwithstanding the statutes of 13 Eliz. c. 5, and 27 *ib.* c. 4. *Reynell v. Peacock*, 2 Roll. Ab. 185. *Brown v. Jones*, 1 Atk. 190. *Brown v. Carter*, 5 Ves. 862, and will even support a settlement of moveables; and neither the joint possession of furniture, nor the want of a schedule, nor the fact that the settler was indebted at the time, with knowledge of the wife, will affect the settlement, *Campion v. Cotton*, 17 Ves. jun. 263; 1 Atk. 190. *Tyler v. Lyttleton*, Brownl. 189, *ante*, p. 375, n. (13); nor will the circumstance of its having been procured by fraud and imposition (the wife not being privy) invalidate it, *Barrow v. Barrow*, Dick. 504; and see *ib.* 84, 761.

Marriage a good
consideration for
settlement made
previous to the
marriage.

But in order to the validity of a settlement *after* marriage, Settlement after marriage.
(unless in pursuance of articles entered into before the marriage,)

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tended marriage, [and of the fortune of the said

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the student should be apprized that it is generally requisite as against creditors, under 13 Eliz. c. 5, that the settler be in a state of perfect solvency at the time of making the settlement; for if he be then incumbered with debts, every voluntary alienation will be void as against his creditors, *Russel v. Hammond*, 1 Atk. 13. *Taylor v. Jones*, 2 *ib.* 600. *Doe v. Routledge*, Cowp. 711. *Goodright v. Moses*, 2 Blac. 1019. *Pringle v. Hodgson*, 3 Ves. jun. 617. *Lush v. Wilkinson*, 5 *ib.* 384, and see *Curtis v. Price*, 12 *ib.* 103. But if he be not indebted at the time, although he afterwards become indebted, such settlement, unless affected by some particular evidence or badge of fraud to deceive subsequent creditors, will be good. Per Hardwicke, Ch., *Townshend v. Windham*, 2 Ves. 10, and *vid.* *Middlecome v. Marlow*, 2 Atk. 520, and *Kidney v. Cousemaker*, 12 Ves. jun. 136. *Battersher v. Farrington*, 1 Wils. 8, 1 Swanst. 106. *Halloway v. Millard*, 1 Madd. 414; the consequence, however, will be, that the estate being thrown into assets, subsequent creditors will be let in, *Walker v. Burrows*, 1 Atk. 93.

But although a settlement after marriage will in general be good as against subsequent creditors, if made for valuable consideration, and the advancement of the issue (and the consideration will not be too strictly examined, *Jones v. Marshall*, Ca. T. Talb. 64;) notwithstanding the statute of 13 Eliz. c. 5, yet such settlements are more strictly construed in favour of purchasers for a valuable consideration, against whom they will generally be considered fraudulent and void, by virtue of the subsequent statute of 27 Eliz. c. 4; for per Mansfield, Ch. J. in *Hill v. Bp. of Exeter*, 2 Taunt. 83, "as to the general doctrine that voluntary deeds, however reasonable, are void against a subsequent deed in consideration of money, there can be no doubt, as very strong cases have decided, that if a man, after marriage, make the most prudent settlement on his wife and children, and he be dishonest enough to sell it for money afterwards, he may;" and see *Evelyn v. Templar*, 2 Brow. Ch. Rep. 148; and although the purchaser had notice of the settlement, it will make no difference if he rest his claim upon this statute, *Taylor v. Jones*, 2 Atk. 600. *Doe dem. Otley v. Manning*, 9 East, 59. *Pulvertoft v. Pulvertoft*, 18 Ves. 84. *Buckell v. Mitchell*, *ib.* 100. *Smith*

(*intended wife*) to which the said (*intended husband*)

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v. Garland, 2 Mer. 123. And limitations to brothers or other collateral relations on failure of issue of the marriage, are voluntary limitations, Johnson v. Segard, 3 Maud. 283, and may be defeated by a subsequent sale or mortgage, even though the purchaser or mortgagee had notice of the settlement, Cornish v. Trapand, 6 Dow. 66; but not so of limitation to children of a second marriage on failure of children of the first marriage, Clayton v. E. of Winton, 3 Mad. 302, n. (a). Smith v. Garland, 2 Mer. 123. Sutton v. Chetwynd, 3 ib. 249.

And, as has been already intimated, a settlement made after marriage, if in pursuance of previous articles, will also be good, notwithstanding the settler may at the time be indebted; (and the recital of previous articles, although they do not appear, will be conclusive against himself and all claiming under him, but not against creditors, Battersbie v. Baringdon, 1 Swanst. 106, 1 Wils. 88, and cases there cited; Smith v. Garland, 2 Mer. 123;) and whether the settled property belong to the husband or the wife, Dundas v. Daltens, 2 Cox, 235, (but see Spurgeon v. Collier, 1 Eden, 55, *contra*.) Pulvertoft v. Pulvertoft, 18 Ves. 84. Buckell v. Mitchell, ib. 100. Ramsden v. Hylton, 2 Ves. 304. Evelyn v. Templar, 2 Br. Ch. Ca. 148; so if made in consideration of a portion subsequently accruing to the wife, Colville v. Parker, Cro. Jac. 158. Ramsden v. Hylton, 2 Ves. 304. Stileman v. Ashdown, 2 Atk. 481. Wheeler v. Caryl, Amb. 121. White v. Thornborough, Prec. Ch. 425, 2 Vern. 702, S. C. and although it be agreed only to be so given, without having been actually paid, it seems it will support the settlement, Brown v. Jones, 1 Atk. 188. Stileman v. Ashdown, 2 ib. 477. Ramsden v. Hylton, 2 Ves. 304; for per Hardw. Ch. in Stileman v. Ashdown, "if a husband settle an estate upon his issue, in consideration of a portion to be paid by the friends of his wife, it is not the recompense, but the inducement, which imparts value to such family provision, since the fraudulent intent within the statutes is as much disproved by a moral certainty of the expectation as by the actual receipt of an equivalent." And so if it be made by the concurrence of the father, or any other person without whom it could not be effected, and who gives up a part of his

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will become entitled in right of his said wife (1),}

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interest in the settled property, it will be valid although made subsequent to the marriage; see *Russel v. Hammond*, 1 Atk. 16.

And if the wife surrender up the provision made on her marriage, a new settlement afterwards made, although different from that she relinquished, will be good, see *Scott v. Bell*, 2 Lev. 70; and see *Jones v. Marsh*, Ca. T. Talb. 64; and even though the second settlement make a provision for children for which none was made by the first settlement, if the settlement be expressly made in consideration of the first provision being given up, *Ball v. Burnford*, Prec. Ch. 113, so if she relinquish her title to dower out of an estate for the husband's benefit, *Lavendar v. Blackstone*, 2 Lev. 146; and see *Dolin v. Coltman*, 1 Vern. 324; and *Evelyn v. Templar*, 2 Brow. Ch. Rep. 148.

A settlement after marriage made under the authority of the court of Chancery, upon an application by the husband for the property of his wife, will also be good in like manner as if founded on a portion given to him by her friends, *Jewson v. Moulson*, 2 Atk. 420. *Jacobson v. Williams*, 1 P. Wms. 383. *Richmond v. Tayleur*, *ib.* 734.—So where the settlement is made upon payment by the trustees for the wife of property in their hands to the husband. *Moor v. Rycault*, Prec. Ch. 22. *Wheeler v. Caryl*, Amb. 121. *Brown v. Jones*, 1 Atk. 190. *Ward v. Shallet*, 2 Ves. 18.

*Consideration
of wife's pre-
sent fortune.*

(1) Although it is laid down generally in a number of cases that a husband by making a settlement on his wife previously to the marriage becomes the purchaser of and entitled to the whole of her fortune, whether it consists of choses in possession or in action, *Cleland v. Cleland*, Prec. Ch. 63. *Blois v. Martin*, 2 Vern. 501. *Parker v. Wyndham*, Prec. Ch. 412; and see 3 P. Wms. 199, N. D.; yet this doctrine appears by more recent cases to be confined to such property as she is then in possession of or entitled to, and not to such as may afterwards accrue to her; see *Salway v. Salway*, Amb. 692. *Garforth v. Bradley*, 2 Ves. 677. *Druce v. Denison*, 6 *ib.* 385. *Mitford v. Mitford*, 9 *ib.* 87. *Car v. Taylor*, 10 *ib.* 574; unless otherwise expressly declared or clearly implied by the terms of the settlement, or it be actually reduced by him into possession, *Mitford v. Mitford*, 9 Ves. 95. Hence it becomes necessary to declare

for making a provision for the said (*intended wife*) in case the said marriage shall take effect, and she shall survive the said (*intended husband*) and for the issue, if any, of the intended marriage (1),

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by the settlement whether such future property shall be bound by it or not. If, therefore, it be intended that the provision made for her by the settlement should be in satisfaction of any future as well as of her present property, it should be so expressed here, as,

“In consideration as well of the fortune of the said (*intended wife*) which the said (*intended husband*) will be entitled to upon the said marriage, as also of any other which may hereafter accrue to her.”

Or if the contrary be the intent, say,

“In consideration of the fortune of the said (*intended wife*) which the said (*intended husband*) will be entitled to upon his said marriage, but not in consideration or respect of any future fortune which may afterwards accrue to her.”

Wife's future
fortune.

And in this latter case add a proviso declaring the manner in which any future accession of fortune shall be settled; vide *post*.

If the settlement be after marriage, and be made in pursuance of preliminary articles entered into previous to the marriage, say,

Previous ap-
pointment.

“In pursuance of the covenants and agreements contained in the said hereinbefore in part recited indenture of the day of .”

(1) If the intended husband be tenant in tail of the lands intended to be settled, say, Tenant in tail.

“And for docking, barring, and destroying all estates tail of and in the same messuages, lands, tenements, and hereditaments, and all reversions or remainders expectant or depending thereupon, and all conditions and collateral limitations (if any) annexed to or affecting the same, and

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[and also for and in consideration of the sum of 5s. (1) of lawful current money of that part of the United Kingdom of Great Britain and Ireland called England, to the said (*intended husband*) in hand well and truly paid by the said (*trustees to preserve, &c.*) at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged,] HE (2) the said (*intended*

for conveying and assuring the said messuages, lands, tenements, and hereditaments, to, upon, and for the uses, trusts, intents, and purposes hereinafter expressed of or concerning the same; and in consideration of the sum of 5s. of lawful money of England to the said (*intended husband*) at the time of the execution hereof, in hand well and truly paid by the said (*tenant to the præcipe*), the receipt," &c. *as above*.

Nominal consideration unnecessary.

(1) The consideration of marriage is alone sufficient to raise an use in the trustees, that of 5s. is, therefore, unnecessary, see *Plowd.* 307. 2 *Roll. Ab.* 783; and is here inserted only for conformity to usage.

Wife's estate.

(2) If the estate be the wife's, say,

"She the said (*intended wife*) with the privity and full approbation of the said (*intended husband*), testified by his being a party to and sealing and delivering these presents, HATH granted," &c. *as above*.

Father tenant for life, husband in tail.

If the husband's father be tenant for life, and he be tenant in tail, say,

"In consideration of the sum of 10s. of lawful English money to the said (*father*) and (*intended husband*) respectively in hand well and truly paid by the said (*tenant to the præcipe*) the receipt whereof is hereby acknowledged, he the said (*father*) at the request of the said (*intended husband*), testified by his being a party to and sealing and delivering these presents, and the said (*intended husband*) according to their respective estates and interests, HAVE, and each of them HATH, granted, bargained, sold, aliened, and

husband) HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, release, and confirm unto the said (*trustees to preserve, &c.*) (1), and their heirs, ALL, &c. (2), or howsoever otherwise the said messuages, lands, tenements, and hereditaments, or any of them, now are, or is, or heretofore were or was, situated, tenanted, called, known, described, or distinguished; and also all other the messuages, lands, tenements, and hereditaments, if any, which are comprised in a certain indenture of bargain and sale for a year, hereinafter referred to, as bearing date the day next before the day of the date hereof; TOGETHER with all [houses (3), out-houses, buildings, barns, stables,

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The intended husband grants and releases.

General appurtenances.

released, and by these presents DO, and each of them DOTH, grant, bargain, sell, alien, release, and confirm unto the said (*tenant to the præcipe*) and his heirs, ALL," &c. *as above*.

If the husband took the estate to himself and a trustee to prevent dower, insert the variation, *post*, rider (C). Husband and trustee.

(1) If the estates to be settled are intailed, the grant and release must be to the tenant to the præcipe for suffering a recovery, and see *ante*, Vol. I. No. XXII. p. 297, *et seq.* and *post*, rider (D). Estate tail.

(2) Here describe the subject of the conveyance by its ancient and present name, situation, tenancy, &c. and see *ante*, Vol. I. No. XXVII. p. 405, note. Parcels.

If the conveyance be of a moiety or other portion only of the estate, see the mode of description, &c. in Vol. I. No. XXVI. p. 384. Moiety, &c.

If it be of a remainder, or reversion expectant upon the determination of any prior estate, see *ib.* No. XXIV. p. 346. Remainder, &c.

(3) See general words applicable to different kinds of real property, and INDEX, *voce* GENERAL WORDS.

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Reference to
the bargain and
sale for a year.

coach-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber, and other trees, woods, under-woods, and the ground and soil thereof, mines, quarries, rights and privileges of common, feeding and foldage of every kind, and all] and all manner of [other] rights, privileges, advantages, easements, appendages, and appurtenances whatsoever to the said messuages, lands, tenements, and hereditaments belonging, or in any wise appertaining, or reputed or deemed so to be, or with the same or any of them, or any part thereof, now or heretofore holden, used, occupied, or enjoyed, (ALL which said messuages, lands, tenements, and hereditaments, are now in the actual possession of, or legally vested in the said (*trustees to preserve, &c.*) by virtue of a bargain and sale to them thereof made by the said (*intended husband*) for 5s. consideration, by indenture bearing date the day next before and executed previously to the sealing and delivery of these presents, for the term of one year, commencing from the day next preceding the day of the date of the same indenture, and by force of the statute made for transferring uses into possession), and the reversion and reversions, remainder and remainders expectant upon the said term, or of any other particular estate or estates of and in the said hereditaments and premises, or any of them respectively. AND all and singular the rents,

issues, and profits to arise and become payable for or in respect of the same premises or any part thereof. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity of him the said (*intended husband*), in, to, out of, upon, or respecting the said hereditaments and premises, or any of them, or any part thereof. TOGETHER with all deeds, muniments, writings, and evidences whatsoever, which in any wise relate to the same hereditaments and premises, or any of them, either alone or together with other hereditaments, or property of inferior value, and which now are or hereafter shall or may be in the possession or lawful power of the said (*intended husband*) his heirs, executors, or administrators, or of any person or persons from whom he or they can or may procure the same, without action or suit at law or in equity. AND true and attested copies duly stamped, when and as the said (*trustees to preserve, &c.*) their heirs or assigns, shall require the same, of the several deeds, muniments, writings, and evidences comprised or mentioned in the schedule hereunder written or hereunto annexed, and of all other deeds, muniments, writings, and evidences, if any, not being of record, which now are or hereafter shall or may be so in his or their possession, custody, or power as aforesaid, in any wise relating to the same hereditaments and property, or any of them, jointly with other hereditaments or property of equal or greater value, such copies when first re-

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Title deeds.

And copies.

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To hold to the
trustees, to the
uses, &c. fol-
lowing.

quired to be made and delivered at the expense of the said (*intended husband*) his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the person or persons requiring the same. TO HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereby granted and released, or otherwise assured, or mentioned or intended so to be, with their and every of their rights, members, appendages, and appurtenances (1) unto the said (*trustees to preserve, &c.*) (2) their heirs and assigns, but TO THE USES nevertheless, upon the trusts, and for the several ends, intents, and purposes, and under and subject to the several provisos, limitations, declarations, and agreements hereinafter declared or expressed, of or concerning the same, that is to say, TO THE USE of the said (*intended husband*) and his heirs, until the said intended marriage shall be had and solemnised (3); and

Subsisting
jointure.

(1) If the lands be subject to any subsisting charge as a jointure during the life of the husband's mother, which is frequently the case, say,

"Subject only to the said annuity or yearly rent charge of £ , payable to the said (*husband's mother*) as hereinbefore is mentioned, and the said term of years for securing the same," or *as the case may be*.

Husband tenant
in tail.

(2) If the intended husband be tenant in tail of the lands intended to be settled, see *post*, rider (D).

Husband till
the marriage.

(3) This limitation to the husband or other owner of the estate until the marriage, is to prevent the estate passing from him, should the marriage happen not to take place. But as it

from and immediately after the solemnization thereof, To THE USE of the said (*trustees for wife's pin-money*) their executors, administrators, and assigns, for and during and unto the full end and term of ninety-nine years, to commence and be computed from the solemnization of the said intended marriage, without impeachment of or for any manner of waste, other than wilful or malicious waste; but nevertheless upon the several trusts, and to and for the several ends, intents, and purposes, and subject to the proviso hereinafter declared or expressed concerning the same; and from and after the expiration or other sooner determination of the said term of ninety-nine years, and also during the continuance of the said term, subject only thereto and to the trusts thereof, To THE USE of the said (*intended husband*) and his assigns, for and during the term of his natural life, without impeachment of or for any manner of waste, other than wilful and malicious or permissive waste, by pulling down houses, (except for rebuilding or repairing the

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To trustees for 99 years, upon trusts after mentioned.

Then to the use of intended husband for life.

leaves him an entire ownership over the estate, and will enable him to defeat the intended uses by sale or other disposition of it, for a valuable consideration, to a person who has no notice of the settlement; it may be attended with danger in the hands of a person regardless of the principles of good faith; who, should he divest the seisin in the trustees, by feoffment, &c. may destroy the future uses out of which they are to arise; and see *Haynes v. Villars*, 2 Sid. 64. 158; *Wegg v. Villers*, 2 Roll. Ab. 769, pl. 11. The execution of the deed should therefore be postponed till as late a period as possible, previously to the marriage.

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same) or suffering the same to go to decay for want of repairs, but with full power for him the said (*intended husband*) to fell and cut down timber and other trees and woods of full or proper growth, whether ornamental or for shelter, and to open mines or pits, and pull down, remove, and otherwise alter, at pleasure, any mansion-houses, parks, or pleasure-grounds(1); and from and immedi-

Without impeachment of waste.

(1) A tenant for life, when his estate is declared to be "without impeachment of waste," has, at law, full power over the timber growing upon the estate, and some other privileges equal to a tenant in fee-simple; but in equity, he will be restrained from cutting down timber, or other trees planted for the ornament or shelter of the mansion-house, &c. and from pulling down or suffering to go to decay the houses, farms, or other buildings upon the estate; *Vane v. Ld. Bernard*, 2 Vern. 738; *Rolt v. Ld. Somerville*, 2 Eq. Ca. Ab. 759; *Ashton v. Ashton*, 1 Ves. 264; *Piers v. Piers*, *ib.* 521; *Parteriche v. Powlet*, 2 Atk. 383; *Sir H. Packington's Ca.* 3 *ib.* 215; *Chamberlyne v. Dummer*, 3 Brow. Ch. Ca. 166; *Strathmore v. Bowes*, 3 Ves. jun. 28; *Marquis of Downshire v. Lady Sandys*, 6 *ib.* 107. 115; *Ld. Tamworth v. Ld. Ferrers*, *ib.* 419; *Williams v. Macnamara*, 8 *ib.* 70; *Courthope v. Mapplesden*, 10 *ib.* 291. 408; *Wickham v. Wickham*, Coop. 208; *Gower v. Eyre*, *ib.* 160; *Davis v. Uphill*, 1 Swanst. 129; for though this clause, "without impeachment of waste," was formerly holden to exempt the tenant for life not only from the penalties of the stats. of Marlbridge (52 Hen. III. c. 23), and Gloucester (6 Ed. I. c. 5), but from all other liabilities, in respect of waste committed by him; see 11 Co. 79; *Ashton v. Ashton*, 1 Ves. sen. 264, 265; yet this latitude of construction has since, by a series of modern decisions, been so curtailed, (perhaps to an unreasonable extent, see *Burgess v. Lamb*, 16 Ves. jun. 179), that notwithstanding this clause be annexed to the limitation of any particular estate, the tenant is restrained in equity not only from committing what is palpably to the detriment of the inheritance, by pulling down houses, stripping the estate of its timber, but even from cutting down

ately after the determination of the said estate, by forfeiture, or otherwise, in his life-time, To THE USE of the said (*trustees to preserve, &c.*) (1) and

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trees as are considered either ornamental or defensive to the mansion or dwelling-house on the estate; *Packington's Ca.* 3 Atk. 215; *Burgess v. Lamb*, 16 Ves. 183; or which have been planted to exclude unsightly objects from view, *Day v. Merry*, 16 Ves. 183, although such timber may have come to maturity and in decay, *Pinot v. Pinot*, 3 Atk. 95. Hence, therefore, where it is intended that the tenant for life should have a more unlimited enjoyment of the estate, (which seems reasonable, where he is himself the owner of the inheritance) the powers in the text must be expressly given to him; they should, however, be confined to his own personal acts, and not extend to his assigns.

To the use of
trustees to pre-
serve contingent
remainders.

(1) As it is required by the rules of law, that a remainder in fee or for life, should have an antecedent or particular estate of freehold to support it; and as, where a remainder is limited to take effect on a contingency, (that is, in favour of a dubious and uncertain person, as to a person yet unborn, or upon a dubious or uncertain event, as in case the person in whose favour the remainder is limited, should survive another) the particular estate may possibly be destroyed, or determine before the contingency happens upon which it is to take effect in possession, or become vested; it becomes necessary in the limitation of such remainders, that an estate of freehold should be vested in some person or persons, and their heirs, for the life of the particular tenant; to commence on the determination of his estate by forfeiture or otherwise in his life-time, on which event the estate of the trustees takes effect in possession, and supports the subsequent estates limited to commence on contingencies which have not yet happened. But where a legal estate is vested in trustees, and the contingent limitations are only trusts, there is no necessity to limit an estate to trustees to preserve, it is nevertheless proper in many cases, for the reasons which will be mentioned hereafter, and see *Stansfield v. Habergham*, 10 Ves. jun. 282: nor are trustees necessary for this purpose in a settlement of

Trustees to
preserve con-
tingent remain-
ders.

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Remainder to
the use that
wife may receive
a rent-charge
for life, by way
of jointure.

their heirs, during the natural life of the said (*intended husband*) IN TRUST to preserve the contingent uses and estates hereinafter limited from being defeated or destroyed, and for that purpose to make entries or bring actions as occasion may require; but nevertheless to permit and suffer the said (*intended husband*) and his assigns to receive and take the rents, issues and profits thereof, to and for his and their own use and benefit. AND from and immediately after the decease of the said (*intended husband*) (1), Then to and for the

copyholds; *Garth v. Cotton*, 1 Dick. 183. *Lovell v. Lovell*, 3 Atk. 11. *Mildmay v. Hongerford*, 2 Vern. 243; (but as to the insufficiency of the reason usually assigned, i. e. the freehold being in the lord, see *Gilb. Ten.* 365. *Watk. Ed. and Athert. Set.* 568); they are nevertheless usually inserted in favour of the remainder-man, for the purpose of preventing the legal right of the tenant for life to cut timber, of enabling the trustees to exercise the powers of sale, &c.; see *Stansfield v. Habbergham*, 10 Ves. jun. 362.

Wife for life.

(1) The estate is sometimes limited to the wife for life after the decease of the husband, particularly where it is her own inheritance, in which case say,

“ THEN TO THE USE of the said (*intended wife*) and her assigns, for and during the term of her natural life, without impeachment of or for any manner of waste, other than wilful and malicious or permissive waste, by pulling down houses (except for rebuilding or repairing the same) or suffering the same to go to decay for want of repairs, but with full power for her the said (*intended wife*) to fell and cut down timber and other trees and woods of full and proper growth, whether ornamental or for shelter,

use and purpose, and to the end and intent that the said (*intended wife*) and her assigns shall and may, in case she shall survive the said (*intended husband*), have, receive, perceive, take, and enjoy, for and during the term of her natural life (1), one annuity, clear yearly rent-charge, or annual sum of £ , of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency, to be issuing, growing, and payable out of and from, and charged and chargeable upon all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or mentioned or intended so to be, by way or in the na-

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and to open mines or pits, and to pull down, remove, and otherwise alter, at pleasure, any mansion-house, parks, or pleasure-grounds, as and for or in nature of a jointure for her the said (*intended wife*) in lieu, satisfaction, and bar of all dower, free bench, or thirds, either at the common law or by custom which she the said (*intended wife*) may or otherwise might have, or be entitled to, or claim or demand in or out of any the present or future manors, messuages, lands, tenements, hereditaments, or other estates or property of him the said (*intended husband*); and from and after the determination of that estate by forfeiture, or otherwise in her life-time, Then to the use of the said (*trustees to preserve, &c.*)" &c.

(1) The intermediate estate to the trustees between the life estate and the remainder to the first and other sons, though not necessary to support the subsequent remainders, will prevent her surrendering to either of them, and by thus putting him in possession enable her to anticipate the power of jointuring after contained, to the prejudice of the others.

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ture of a jointure (1) for her the said (*intended wife*), and in lieu, bar, and full satisfaction of and for all dower or thirds at common law, or free bench or widow's part by custom, or otherwise, which she the said (*intended wife*) might or could have, claim, or be entitled to, in, out of, or respecting all or any of the messuages, lands, tenements, and hereditaments, whereof the said (*intended husband*) now is, or at any time or times during the said intended coverture, shall or may be seised or possessed for any estate of inheritance, or other estate or interest to which dower, thirds, free bench, or widow's part does or would belong, or be incident; which said annuity, yearly rent-charge, or annual sum, it is hereby agreed shall be payable and paid to her the said (*intended wife*) her appointees and assigns, [at or in the common dining hall (2) of the Inner Temple, London] or

Jointure bar of
dower.

(1) Where any part of the husband's lands, (except copyholds) is settled upon the wife by way of jointure, before marriage, she is precluded from claiming her dower by the statute of 27 Hen. 8, c. 10, sec. 6; but where she takes a collateral provision in lieu of a proper jointure, it must be expressly declared to be in satisfaction of dower; see 2 Blac. Com. 137; *Smith v. Smith*, 5 Ves. jun. 189; *Druce v. Denison*, 6 Ves. 385; *ante*, No. I. p. 262, n. (1); and see *Elem. Conv.* 2d edit. p. 285, and *ib.* n. (1), 287, *ib.* n. (2).

Place of pay-
ment.

(2) Where an annuity or other sum is collateral to the land upon which it is charged, it must regularly be tendered to the person of the annuitant, and when not so it must be tendered on the land itself; see *ante*, Vol. V. No. III. p. 39, n. (3). To avoid, therefore, the inconveniencies which might arise from a strict performance of either of these requisites, where it is essential for any legal purpose, as for saving a condition or the like, a time and place is usually appointed, and the same form



be otherwise had, received, and taken by her and them, on the four most usual feast days, or days of payment of rent in the year, (that is to say) the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, by even and equal portions on each of the said days in every year, without any deduction or abatement whatsoever being made or taken out of the same, for or in respect of the land or king's tax (1), or any other taxes, charges, rates, duties, assessments, or impositions, cause, matter, or thing whatsoever, whether the same or any of them be now or already or hereafter shall or may be taxed, charged, rated, assessed, or imposed upon, or payable in respect of the hereditaments and premises chargeable with the payment thereof, or any of them, or any part thereof, or the annuity, yearly rent-charge, or annual sum of £ , or any part thereof, or upon

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is commonly pursued in marriage settlements; but in this case there appears to be no practical use in it, and it may therefore be made payable at the

“ Usual place of abode of her the said (*intended wife*), if resident in England.”

(1) By “ a clear yearly sum ” is intended a sum clear of the natural outgoings incident to the estate, as repairs and parochial payments, but in exclusive of the land or other tax usually payable by the landlord; see *E. Tyrconnel v. Duke of Lancaster*, Amb. 237; *Ly. Londonderry v. Wayne*, *ib.* 424, 2 Ves. 500, S. C.; *Marchioness of Blandford v. Duchess of Marlborough*, 2 Atk. 542. If, therefore, it be meant that the jointure should be actually clear of all deductions whatsoever, it should be so expressed.

Clear yearly
sum.

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the said (*intended wife*) or her assigns, in respect thereof, by authority of parliament or otherwise howsoever, and whether any future taxes, charges, rates, duties, assessments, impositions, or payments, shall be in the nature of those in being, or any of them, or not, which shall or may be payable by her the said (*intended wife*) in respect of the said yearly rent-charge, by authority of parliament; the first quarterly payment of the said annuity, yearly rent-charge, or annual sum of £ , to begin and be made on such of the said feast days, or times of payment as shall first or next happen after the decease of the said (*intended husband*); and a due and proportionate part thereof to be payable and paid for or in respect of so many days as shall or may elapse from the last quarterly day of payment thereof next preceding her decease up to and until the day of such decease (1); (but exclusive of any arrears thereof exceeding twelve calendar months prior to such last quarter's day of payment (2). AND to and for this further use (3), intent, and purpose,

Power of distress for wife's jointure.

Proportionate part.

(1) An annuity settled upon the wife will not be payable subsequently to the last quarter-day preceding her death, unless otherwise declared: see *Anderson v. Dwyer*, 1 Schol. and Lefr. 301; *Webb v. Shaftsbury*, 11 Ves. 361; *Franks v. Noble*, 12 *ib.* 484; and see *ante*, Vol. VI. No. II. p. 23, n. (27).

Arrears.

(2) The wife is not entitled to call for more than one year's arrears of her annuity, if therefore it be otherwise agreed it must be expressly so stipulated, see *Ashton v. Ashton*, 1 Ves. sen. 267. *Parkes v. White*, 11 Ves. jun. 225.

Distress.

(3) That a right of distress may be limited by way of use, see *Vausser v. Jeffry*, 2 Swanst. 274; and *Cosawyer v. Strode*, *ib.* 347; and *ante*, Vol. VI. pp. 25, n. (33), 147, n. (1), 148, n. (1).

that in case the said annuity, yearly rent-charge, or annual sum of £ , or any part thereof, shall at any time or times be in arrear and unpaid by the space of fourteen days next over or after any or either of the days or times, at or upon which the same is hereby made payable, (being lawfully demanded) then and from thenceforth, and from time to time, as often as the same shall happen, it shall be lawful for the said (*intended wife*) and her assigns, during her natural life, into and upon all and every or any the messuages, lands, tenements, and hereditaments, so charged with the payment thereof, or mentioned or intended so to be as aforesaid, to enter and distrain, and the distress and distresses there found, to take, lead, drive, carry away, and impound, and in pound to detain and keep, until the said annual sum or yearly rent-charge of £ , and all arrears thereof, together with all costs and expenses which shall or may be occasioned and incurred by taking and keeping such distress and distresses, shall be fully paid and satisfied, and in default of such payment thereof, or of any part thereof, within the space of five days after such distress or distresses shall be taken, to appraise, sell, and dispose of, or cause to be appraised, sold, and disposed of, the same distress or distresses, or otherwise to act therein and deal therewith according to due course of law, and in like manner as in cases of distress taken for nonpayment of rent reserved upon leases for years, to the intent that she the said (*intended wife*) and her assigns, shall and may be fully paid and satisfied, the said annuity, yearly rent-charge, or annual

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sum of £ , and all arrears thereof, and all costs and expenses attending the nonpayment and recovery of the same, every which entry, when so made, shall be without impeachment of waste, other than wilful and malicious waste, and shall be good and valid, although there shall be no sufficient distress upon the premises. AND (1) to and for this further use, intent, and purpose, that in case the said annuity, yearly rent-charge, or annual sum of £ , or any part thereof, shall be in arrear and unpaid by the space of twenty-eight days next after any of the said days or times at or upon which the same ought to be paid as aforesaid, then and in such case, and from time to time, so often as the same shall happen, (although no formal or legal demand (2) shall be made thereof) it shall be lawful for the said (*intended wife*), and for her assigns, during the term of her natural life, to enter into and upon, and have, hold, occupy, possess, and enjoy all and singular the said hereditaments and premises so charged with the payment thereof, or mentioned or intended so to be as aforesaid, or enter into or upon any part or parcel thereof in the name of the

Power of entry. (1) By virtue of this power of entry, the wife or her assigns may maintain an ejectment in case the rent-charge should be in arrear beyond the time limited for payment, *Jemmot v. Cooley*, 1 Lev. 170, Sir T. Raym. 135. 158, *ante*, Vol. VI. No. II. p. 26, n. (34), No. IV. p. 148, n. (1), the possession being transferred by the statute of uses, (27 Hen. 8.) *Haverhill v. Hare*, Cro. Jac. 510. Gilb. Rents, 137.

Demand necessary.

(2) Without this stipulation, a demand would be necessary; see *ante*, Vol. VI. No. II. p. 25, n. (32).

whole, and to have, receive, perceive, take, and retain the rents, issues, and growing produce thereof, to and for her and their own use and benefit, until thereby or otherwise she the said (*intended wife*) and her assigns, shall be fully paid and satisfied, the said annuity, yearly rent-charge, or annual sum of £ , and all arrears thereof, whether the same shall have accrued before or during the time of such possession, together with all costs, damages, and expenses which she or they shall be put unto, or sustain, or become liable to pay, by reason of the non-payment thereof, at or upon the day or time, or days or times when the same ought to have been paid, according to the true intent and meaning of these presents, which possession, when taken, shall be without impeachment of waste, other than wilful and malicious waste (1). AND as to and concern-

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(subject to the
rent-charge) to
the use of trustees for 1000
years, upon
trusts after
mentioned.

(1) Sometimes the mansion-house is settled upon the wife until the oldest son attain the age of twenty-one; in which case say,

“AND from and after the decease of the said (*intended husband*) in the life-time of the said (*intended wife*) his intended wife, in case he shall leave any child or children him surviving, then as to and concerning the said capital messuage or mansion-house, with the offices, out-houses, buildings, parks, pleasure-grounds, yards, gardens, and appurtenants to the same belonging, or therewith enjoyed, to the use of the said (*intended wife*) and her assigns, if a son or sons of the bodies of the said (*intended husband*) and (*intended wife*) shall be living at the time of the decease of the said (*intended husband*), or born in due time thereafter, un-

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ing the said messuages, lands, tenements, hereditaments, and premises, hereby granted and released, or mentioned or intended so to be, with their appurtenances, from and after the decease of the said (*intended husband*) and also in the mean time and during the life of the said (*intended wife*) subject to, and charged and chargeable only with the said annuity, yearly rent-charge, or annual sum of £ , and to the powers and remedies hereby given and provided for the recovery thereof (1). To THE USE AND BEHOOF of the said (*trus-*

til a son of the said (*intended husband*) by the said (*intended wife*) shall attain the age of twenty-one years, or every of such sons shall depart this life, which shall first happen, and the said (*intended wife*) shall so long live and continue unmarried and the widow of the said (*intended husband*); and in case there shall be no son of the said (*intended husband*) by the said (*intended wife*) living at the time of his decease, or born in due time thereafter, or being a son or sons, they shall all die before either of them shall attain the age of twenty-one years, and there shall be a daughter or daughters of the body of the said (*intended husband*) by the said (*intended wife*) living at the time of his decease, or born in due time thereafter, then to the use of the said (*intended wife*) and her assigns for her natural life, if she shall so long continue unmarried and the widow of the said (*intended husband*) but not otherwise, and any daughter, or the issue of any daughter of the said (*intended husband*) by the said (*intended wife*) shall so long live."

Trustees to
preserve.

(1) The student will perceive that there is no limitation to the trustees to preserve contingent remainders after the determination of the wife's estate, as there is after that of the husband, because as no act of hers will create a forfeiture of lands which were the inheritance of her husband, to the prejudice of

tees for raising portions, &c.) their executors, administrators, and assigns, for, and during, and unto the full end and term of one thousand years (1) from thence next ensuing, and fully to be completed and ended, without impeachment of or for any manner of waste, other than wilful and malicious waste, but upon the trusts, and to and for the ends, intents, and purposes, and under and subject to the proviso hereinafter declared or expressed, of or concerning the same. AND from and after the end, expiration, or other sooner determination of the said term of one thousand years, and also in the mean time and during the said term, subject only thereto and to the trusts thereof, To THE USE of the first or only son (2) of

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Remainder to the first and other sons in tail male.

those in remainder ; see 11 Hen. 7, c. 20, and 32 Hen. 8, c. 36 ; such a precaution would be unnecessary when the lands are his inheritance, but not where it is her estate.

(1) By means of this term, the portions for younger children may be raised without disposing of the fee or disturbing the preceding freehold in the land ; but as a disposition of the estate for so long a term would be attended with great inconvenience to the first son, he is, by a subsequent clause, allowed to exonerate the estate by himself paying the portion.

Term of 1000 years.

(2) As one of the chief objects in marriage settlements is to preserve the estate to the issue, great care must be taken that no such estate be limited or suffered to result to the parents, as will enable them, by recovery, or other means, to acquire the fee and defeat the issue ; as by limiting an estate for life to one of the parents only, and the inheritance to the heirs of the body of the other or of both. But as it is an established doctrine since Shelly's case, 1 Co. 93, that whenever an ancestor takes an estate of freehold, (which an estate for life is) and by the same con-

First and other sons.

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the body of the said (*intended husband*) on the body of the said (*intended wife*), his intended wife law-

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veyance an estate of inheritance is limited to his heirs, the estate for life will unite with the inheritance, and give the ancestor an absolute ownership over the whole, the limitation must be so managed as to prevent this union:—this may be done by limiting such an estate to the parents as from its nature cannot coalesce with the inheritance, as to the parents for ninety-nine years, if they shall so long live, with remainder to the issue in tail, &c. or a trust or *equitable* estate to the parents, and a *legal* estate to the issue. But the mode usually adopted is, to limit the estate to the issue after the death of the parents, by the description of their first and other *sons* and *daughters*, or their children in tail, as above; in which case they are holden to take as purchasers by way of *descriptio personarum*, and not in their character of heirs, or descendants from the parents. But as the estates, when limited to the children, if made, as they usually are, before the birth of such children, will be in contingency until some child come *in esse* in whom they may vest, and consequently be liable to be destroyed by the parents by a destruction of the particular estates by which they are supported, it is further necessary for the security of the issue, that an intervening estate should be limited to certain persons in trust to preserve those remainders, that is, in whom an estate of freehold may vest, in order to support them till a child come into *esse*.

To the use of
such son as hus-
band and wife
shall appoint.

The only objection to this mode of preserving the estate to the issue by limiting it to the first and other sons, is, that the giving an estate to the eldest son, makes him more independent of his parents than may be consistent with his welfare; to prevent which, the estate may be limited to such son as the father or mother, or both, shall by deed or will appoint, and in default of such appointment, to the first and other sons, &c. as,

“ TO THE USE of all and every or such one or more of the son or sons of the body of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, to and for such estate and estates, interest and interests, and in such parts, shares, and proportions, manner, and form, and subject to such charges and payments to any one or

fully to be begotten, and of the heirs male of the body of such first or only son, lawfully issuing,

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more of such son or sons, and with and under such restrictions, limitations, and powers, with or without power of revocation, as they the said (*intended husband*) and (*intended wife*) (1) at any time or times during their joint lives, in and by any deed or deeds, writing or writings, to be by them, and each of them, sealed and delivered in the presence of and attested by two or more credible witnesses, or as the survivor of them in and by any deed or deeds, writing or writings, to be by him or her sealed and delivered in the presence of and attested by the like number of witnesses, or in and by his or her last will and testament in writing, or any codicil or codicils thereto, to be by him or her signed, sealed, and published in the presence of three or more credible witnesses attesting the same, shall from time to time direct, limit, or appoint; and until such direction, limitation, gift, or appointment, or in case any such shall be made, then subject thereto, and when and as the estate or estates, interest or interests, thereby directed, limited, given, or appointed, shall respectively end and determine, and in the mean time subject thereto, and as to such part or parts of the same premises, and all such estate and interest therein, whereof no such direction, limitation, gift, or appointment, as aforesaid, shall be effectually made, then To THE USE of the first son," &c. *as above*.

Or the limitation may be to all the children equally, as,

"To THE USE and behoof of all and every the child and children, whether male or female, of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, to be equally divided between and amongst them, if more than one, share and share alike, as tenants in common, and

To the use of
all the children
of the marriage,
equally.

(1) It is common in settlements to entrust the husband alone with the power of apportioning amongst the children where the property is small; see 1 Ball and Beat. 91; but it is not so frequent where it is considerable.

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and his heirs; and in default of issue (1) male of a first or only son, To THE USE of the second son of the body of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, and of the heirs male of the body of such second son lawfully issuing; and in default of such issue of such second son, To THE USE of the third, fourth, fifth, sixth, seventh, and all and every

not as joint tenants, and of the several and respective heirs of the bodies of all and every such child and children respectively issuing; and if there shall be but one child, then To THE USE of such only child, and the heirs of his or her body. AND in case there shall be more than one such child, and there shall be a failure of lawful issue of the body or bodies of any such child or children, then as to the original part and share, or parts and shares of such child or children, whose issue shall so fail, and also as to such other or accruing part and share, or parts and shares, as by virtue of this present clause shall have become vested in or accrued unto the same child or children, or his, her, or their issue, To THE USE of the other or others of the said child or children so remaining or surviving, and the heirs of the body and respective bodies of such remaining or surviving child or children, equally to be divided between such remaining or surviving children, if more than one, share and share alike, as tenants in common, and not as joint tenants; and if there shall be but one such remaining or surviving child, then To THE USE of such one only remaining or surviving child, and the heirs of his or her body; and in default of such issue, To THE USE," &c. *as above*.

Issue includes grandchildren.

(1) The word issue, unless confined, includes all the descendants of the person from whom the issue may spring, and, therefore, comprehends grand-children, *Leigh v. Norbury*, 13 Ves. jun. 340.

other the son and sons of the body of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, severally, successively, and in remainder, one after another, as they and every of them shall be in seniority of age and priority of birth, and of the several and respective heirs male of the body and bodies of all and every such son and sons lawfully issuing, the elder of such sons and the heirs male of his body issuing being always to be preferred, and to take before the younger of such sons and the heirs male of his and their body or respective bodies issuing (1);

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(1) Here may be added a proviso that if any son, except the youngest, shall become entitled to certain estates in consequence of the limitations contained in a former settlement, the interest of the son so becoming entitled shall go over to the next in remainder; the form of which proviso may be as follows:

Shifting use on
a son coming to
other estates.

“PROVIDED nevertheless, and it is hereby declared and agreed by and between the parties hereto, that in case the second, third, fourth, fifth, sixth, and seventh, or any other son and sons (save and except the youngest son) of the body of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, or the heir or heirs of the body or bodies of such second, third, fourth, fifth, sixth, seventh, or other son or sons (except the youngest son) shall, by the death or failure of issue of the first or any other son or sons of the body of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, be or become entitled to be in the actual possession of, or in the receipt or receipts of the rents and profits of the said messuage or tenement, lands, and hereditaments at aforesaid, by virtue of the limitations thereof hereinbefore contained, then and in every such case the use and estate of and in the aforesaid messuages, farms, lands, tenements, and heredita-

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daughters in
tail general.

and for default of such issue, To THE USE of all and every the daughter and daughters of the said

ments at _____, hereinbefore limited to, or intended for such son or sons, (save and except the youngest son) or the heir or heirs of his or their body or bodies, who shall or may so respectively happen to become entitled to the said messuage or tenement, lands, and hereditaments, at _____, shall from thenceforth cease, determine, and become void to all intents and purposes, as if such son or sons, or his or their issue respectively so becoming entitled as aforesaid, was or were dead without issue: and then and in such case, and so often as the same shall happen, the said messuages, lands, tenements, and hereditaments at _____ aforesaid, shall go over and remain unto and for the benefit of the person or persons who, by virtue of the limitation hereinbefore contained, would be next entitled to take and enjoy the said hereditaments last mentioned, in case such son or sons of the said (*intended husband*) and (*intended wife*) (other than and except a youngest son) or his or their respective issue, so as aforesaid becoming entitled to the said messuage or tenement, lands and hereditaments at _____, was or were dead without issue, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding."

To the use of
the first and
other daughters
in tail male.

In the settlement of large estates they are sometimes limited in failure of male issue of sons, to the daughters in strict settlement in tail male, and then to the sons and daughters in tail general, as,

"AND in default of such issue, To THE USE of the first daughter of the body of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, and the heirs male of the body of such daughter issuing; and for default of such issue, To THE USE of the second, third, fourth, fifth, sixth, seventh, and all and every other the daughter and daughters of the body of the said (*intended husband*) on the body of the said (*intended wife*) his intended

(*intended husband*) on the body of the said (*intended wife*), his intended wife lawfully to be begotten, if

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wife to be begotten, successively and in remainder one after another, as they and every of them shall be in seniority of age and priority of birth, and the several and respective heirs male of the body and bodies of all and every such daughter and daughters lawfully issuing, the elder of such daughters, and the heirs male of her body being always preferred, and to take before the younger of them, and the heirs male of her and their body and respective bodies issuing; and in default of such issue, To THE USE of the first son of the body of the said (*intended husband*) on the body of the said (*intended wife*) his intended wife, lawfully to be begotten, and the heirs of the body of such first son lawfully issuing; and for default of such issue, To THE USE of the second, third, fourth, fifth, sixth, seventh, and all and every other the son and sons of the body of the said (*intended husband*) on the body of the said (*intended wife*) his intended wife lawfully to be begotten, severally, successively, and in remainder one after another, as they and every of them shall be in seniority of age and priority of birth, and the several and respective heirs of the body and bodies of all and every such son and sons lawfully issuing, the elder of such sons and the heirs of his body being always preferred, and to take before the younger of such son and sons, and the heirs of his and their body and respective bodies issuing; and for default of such issue, To THE USE of the first daughter of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, and the heirs of the body of such first daughter lawfully issuing; and in default of such issue, To THE USE of the second, third, fourth, fifth, sixth, seventh, and all and every other the daughter and daughters of the body of the said (*intended husband*) on the body of the said (*intended wife*) his intended wife to be begotten, successively, and in remainder one after another, as they and every of them shall be in seniority of age

Remainder to the first and other sons in tail general.

Remainder to the first and other daughters in tail general.

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more than one, equally to be divided between them, share and share alike, as tenants in common, and

and priority of birth, and the several and respective heirs of the body and bodies of all and every such daughter and daughters lawfully issuing, the elder of such daughters, and the heirs of her body, being always preferred, and to take before the younger of such daughters, and the heirs of her and their body and respective bodies issuing; and in default of such issue, TO THE USE of the said (*intended husband*) his heirs and assigns for ever."

Limitation to
such daughters
as husband and
wife shall ap-
point.

Or the limitation may be to such of the daughters as the husband and wife shall appoint; in which case insert here,

"TO THE USE of all and every or such one or more daughter or daughters of the body of the said (*intended husband*) on the body of the said (*intended wife*), his intended wife to be begotten, for such estate and estates, in such parts, shares, and proportions, and with such limitations over, and charged and chargeable with such annual or gross sums, (such limitations over and charges to be for the benefit of some or one of the same daughters) and in such manner and form as the said (*intended husband*) and (*intended wife*) by any deed or deeds, writing or writings, with or without power of revocation, to be by both of them sealed and delivered in the presence of two or more credible witnesses, shall together, during their joint lives, direct, limit, or appoint; and in default of such direction, limitation, or appointment, and as to such part or parts thereof, whereof there shall be no such direction, limitation, or appointment, and in case any such shall be made, then when and as the estates and interests thereby directed, limited, and appointed, shall respectively end and determine, TO THE USE of all and every or such one or more daughter or daughters of the body of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, for such estate and estates, in such parts, shares, and proportions, and with

not as joint tenants (1), and of the several and respective heirs (2) of the body and bodies of all

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such limitations over, and charged and chargeable with such annual or gross sums, (such limitations over and charges to be for the benefit of some or one of the same daughters) and in such manner and form as the survivor of them the said (*intended husband*) and (*intended wife*) after the death of the other of them, by any deed or instrument in writing, with or without power of revocation, to be by him or her sealed and delivered in the presence of two or more credible witnesses, or by his or her last will and testament in writing, or any codicil or codicils thereto, or any writing or writings purporting to be or in the nature of his or her last will and testament, or codicil or codicils, to be by him or her signed and published in the presence of and attested by three or more credible witnesses, shall direct, limit, or appoint: and in default of such direction, limitation, or appointment, and as to such part or parts thereof, whereof there shall be no such direction, limitation, or appointment, and in case any such shall be made, then when and as the estates and interests thereby directed, limited, and appointed, shall respectively end and determine, To THE USE of all and every the daughter and daughters of the body of the said (*intended husband*) on the body of the said (*intended wife*) his intended wife to be begotten, if more than one, equally," &c. as above.

(1) The estate is limited to the daughters on failure of male issue, as tenants in common, that the share of each may go to her representatives in case of her decease, and not survive to the others:—and tenants in common being less connected in interest than joint tenants, a legal severance is compellable, which renders this more convenient than a joint estate. And see *Taggart v. Taggart*, Sch. and Lef. 88.

Daughters
equally.

(2) By some inadvertency it has frequently happened, that the limitation to the daughters of a marriage, on failure of issue male, has been to "such daughters as tenants in common, and not as joint tenants," without any words of inheritance an-

"And their
heirs."

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With cross remainders between them.

and every such daughter and daughters lawfully issuing; and if there shall be but one such daughter, then To THE USE of such only daughter, and the heirs of her body lawfully issuing; and in case there shall be more than one, such daughters and any or either of them shall happen to die without lawful issue of her or their body or respective bodies, then as to the original part and share, or parts and shares of her or them so dying without lawful issue, and also as to such other part or share, or parts or shares, as by virtue of this present clause or limitation shall have become vested in or accrued unto the daughter or daughters last mentioned (1), To THE USE of the other or others (2), or survivors or survivor of the said daughter or daughters, to be equally divided between and amongst them, if more than one, share

nexed;—but as this would give them an estate for life only as against the heirs male of the settler, (and see *Snell v. Silcock*, 5 Ves. jun. 469), care must be taken to introduce the words in the text.

Accruing shares.

(1) Unless the provision for survivorship be made to extend to the accruing as well as the original shares, any share which may accrue to either of the children, on the previous death of a brother or sister, will not survive to the others, but only his or her first or original share; because every accruing share is considered as a new acquisition, independent of the trusts of the settlement: see *Pain v. Benson*, 3 Atk. 80. *Jennings v. Loske*, 1 P. Wms. 275.

Cross remainders not implied in a deed.

(2) Cross remainders will not be implied in a deed, however clear it may be, that such was the intention of the parties; it is therefore necessary, that an express limitation for that purpose should be inserted; see *Doe dem. Fouquet v. Worsley*, 1 East Rep. 416. and *vide Doe dem. Watts v. Wainwright*, 5 Dpnf. and E. 427. 521.

and share alike, as tenants in common, and not as joint tenants, and of the several and respective heirs of their bodies lawfully issuing. AND in case all such daughters but one shall happen to die without lawful issue of her or their body or bodies, then To THE USE of such surviving or only remaining daughter, and of the heirs of her body lawfully issuing; and in default or failure of such issue, To THE USE (1) of the said (*intended*

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(1) Where the settled estates are the inheritance of the wife, *Wife's estate.* the settlement should make a provision for the husband and children of a second marriage, with remainder to herself in fee; see *Halsey v. Halsey*, 9 Ves. jun. 471, in which case limit the estate on failure of issue of the present marriage, to any future husband with whom she may happen to intermarry for life, with remainder to the first and other sons and daughters of such second marriage in tail male and tail general, precisely as in the limitations to the issue of the present marriage, if such be the intent of the parties.

The ultimate limitation, after failure of issue, is frequently to such uses as the husband or wife (according to whose estate it originally was) shall appoint, in which case say, *To such uses as husband or wife shall appoint.*

“ To THE USE of such person or persons for such estate or estates, interest or interests, and to and for such ends, intents, and purposes, and upon such trusts, and charged and chargeable in such manner, and subject to such powers of revocation and new appointment, and other powers, provisos, declarations, and agreements, as he the said (*intended husband*) from time to time, and at any time or times [*or she the said (intended wife)*] during, and notwithstanding her present or any future coverture, and whether she shall be covert or sole] shall in or by any deed or deeds, writing or writings, with or without power of revocation, to be by him [*or her*] sealed and delivered in the presence of,

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Trusts declared
of the term of
99 years.

husband) and the heirs of his body begotten; and in default of such issue, To THE USE of him the said (*intended husband*), his heirs and assigns, for ever (1). AND as to, for, and concerning the said

and attested by, two or more credible witnesses, or in and by his last will and testament in writing, [*or her last will and testament in writing, or any writing in the nature of, or purporting to be her last will and testament*] or any codicil or codicils thereto, to be by him [*or her*] signed, sealed, and published in the presence of, and attested by three or more credible witnesses, from time to time limit, direct, or appoint, or give or devise the same; and for want or in default of and until such limitation, declaration, or appointment, gift or devise, and as to so much and such part of the said messuages, lands, tenements, hereditaments, and premises, or interest therein, whereof no such limitation, declaration, direction, or appointment, gift or devise, shall be effectually made, and in case any such shall be made, then subject thereto, and when and so often as the estates or interests thereby limited shall respectively cease and determine, To THE USE and behoof of the said (*intended husband*) his [*or (intended wife) her*] heirs and assigns for ever."

If it be wished, on the settlement of an estate of inheritance of a feme, to prevent the husband from being tenant by the curtesy in the event of his having issue, this may be done by conveying the inheritance, or an estate of freehold therein, to a trustee, as a man is not entitled to curtesy out of an estate in remainder or reversion expectant upon the determination of an estate of freehold, for want of the requisite seisin in the wife; but merely placing the inheritance in trust will not be sufficient, as a husband is entitled to curtesy in a trust or equitable, as well as in a legal estate; and see 2 Elem. Conv. 2d ed. p. 186, 209.

Springing uses.

(1) Any number of springing uses may legally take effect within twenty-one years after the decease of a life or lives in

term of ninety-nine years hereinbefore limited in use to the said (*trustees for wife's pin-money*), their executors, administrators, and assigns, it is hereby declared, that the same term is so limited to them, upon the trusts, and to and for the ends, intents, and purposes, and under and subject to the provisions and agreements hereinafter declared or expressed concerning the same (that is to say), UPON TRUST that they the said (*trustees for wife's pin-money*), and the survivor of them, and the executors and administrators of such survivor, and their and his assigns, do and shall, yearly and every year, during the joint natural lives of the said (*intended husband*) and (*intended wife*), his intended wife, by and out of the rents, issues, and profits of the hereditaments and premises comprised in the said term, or by mortgage, sale, or other disposition of the same premises, or any of them, or any part thereof, for all or any part of the said term, or by bringing actions against any of the tenants or occupiers of the said premises, for the rent then in arrear, or by all or any of the said ways or means, or any other lawful ways or means whatsoever, to levy and raise one annuity or clear yearly sum of £ (1) of lawful money

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To raise an annual sum for wife, by way of pin-money.

being; *Blandford v. Thackerell*, 2 Ves. jun. 241, 4 Brow. Ch. Ca. 394, S. C. *per nom.* *Blandford v. Fackerell*.

If part of the premises agreed to be settled are copyhold, Copyholds. a covenant to surrender them may be here added; for the form of which, see *post*, rider (E).

(1) Where the property is the intended wife's, supposing the Wife's promatch to be equal, it should seem (in analogy to the settlement perty.

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of the United Kingdom of Great Britain and Ireland, of English value and currency, above and beyond all deductions, abatements, and reprises, for or on account of any taxes, duties, rates, assessments, and impositions whatsoever, whether now and already imposed or subsisting, or at any time or times hereafter during the joint natural lives of the said (*intended husband*) and (*intended wife*), to be imposed, take effect, or subsist by authority of parliament, or otherwise howsoever, and whether the same or any of them shall be in the nature of, or similar to those now in being, or any of them, or otherwise, by way of pin-money (1) for her the said (*intended wife*), and do and shall

directed in the case of a ward of chancery) that, upon the marriage, four-fifths of the proceeds should be settled upon her, for her separate use, during their joint lives (with a clause to prevent anticipation; see *Chassaing v. Parsonage*, 5 Ves. 17), and the remaining fifth upon the husband for his life, with a power for the wife to give one-fifth to him by will, on his surviving her; the residue to accumulate (subject to maintenance) and go, together with the principal funds, to the children; at twenty-one if sons, and twenty-one or marriage if daughters, with power for wife, on her surviving her husband, to charge the property with portions for the children of a second marriage; *Wells v. Price*, 5 Ves. 398: and a life interest for the second husband, 4 Ves. 386. If no children of the first marriage, as she shall by deed or will appoint, to her next of kin; *Bathurst v. Murray*, 8 Ves. 74.

Pin-money.

(1) Pin-money is exclusive of the wife's maintenance, and therefore not subject to deductions for alimony, but is subject to the property-tax when in existence; *Ball v. Coutts*, 1 Ves. and Bea. 292.

pay, apply, and dispose of the same by four even or quarterly payments, on the day of , the day of , the day of , and the day of in every year, unto such person and persons, and for such intents and purposes as the said (*intended wife*) by any writing or writings under her hand, from time to time after the same shall become due, but not sooner, or otherwise by way of anticipating the growing payments thereof (1), shall, notwithstanding her coverture (2), direct or appoint; and in default of such direction or appointment, shall and do pay the said annuity, or clear yearly sum of £ , or so much thereof of which no such direction or appointment as aforesaid shall be made or take effect, into the proper hands (3) of her the said (*intended wife*), for her sole use and benefit, by way of pin-money, and also a proportionable part of the said annuity, or clear yearly sum of £ , from the last day of payment thereof, which shall next precede the

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(1) That this restriction is good, see *Jackson v. Hobhouse*, Anticipation. 2 Mer. 483.

(2) That a feme covert may appoint without her husband, by virtue of a power reserved to her for that purpose, see *Sperling v. Rochfort*, 8 Ves. jun. 181; *Sturgis v. Corp*, 13 *ib.* 190. Appointment by feme covert.

(3) Where money is to be paid to the wife for her separate use, and no trustee is appointed to receive it for her, it should be directed to be paid into her own proper hands, as otherwise the husband would be entitled to receive it as her trustee: see *Bennet v. Davis*, 2 P. Wms. 316. Separate use.

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decease of the said (*intended wife*), in the lifetime of the said (*intended husband*) her said intended husband, up to the day of her death (1), the first payment of the said annuity, or yearly sum of £ , to be made on such of the said days of payment as shall next happen after the solemnization of the said intended marriage; and which said annuity or yearly sum is to be paid in such manner as that the same, or any part thereof, shall not be in any wise subject or liable to the debts, contracts, engagements, intermeddling, or control of the said (*intended husband*); and for that purpose it is hereby declared and agreed, that the receipt and receipts in writing of her the said (*intended wife*) alone, or of such person or persons as she shall from time to time direct or appoint to receive the same, shall from time to time, notwithstanding her coverture, be a good and effectual release, acquittance, and discharge, and good and effectual releases, acquittances, and discharges, for so much of the said annuity or yearly sum, as in or by such receipts respectively, shall be expressed to have been paid (2). AND UPON THIS

And to permit
the residue of
the rents to be
received by in-
tended husband.

Proportionate
part.
Separation.

(1) See *ante*, p. 302, n. (1).

(2) A further trust is sometimes inserted to pay the wife an annual sum in case of a separation taking place between the parties; this, though a singular provision, and little calculated to secure to the husband a prospect of domestic happiness, is holden to be valid in law; see *Rodney v. Chambers*, 2 East, 283; *Chambers v. Caulfield*, 6 ib. 244, (*sed vid. Ld. St. John v.*

FURTHER TRUST, that they the said (*trustees for wife's pin-money*) and the survivor of them, and

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Lady St. John, 11 Ves. jun. 526); by which it seems to be required, in order to the validity of such a proviso, that a reasonable provision should be made for the children of the intended marriage. Where a limitation of this kind is consented to by the husband, it is but a reasonable check upon any improper inclinations in the wife, to declare, that in case of an adulterous elopement, &c. the provision shall cease or be reduced: for although adultery is a bar of dower, it is not so of a jointure; 2 Elem. Conv. 2d Ed. pp. 279, 301, *Seagrave v. Seagrave*, 13 Ves. jun. 443; and *ante*, p. 251, n. (2). A trust for the above purpose may be thus declared:

"AND UPON THIS FURTHER TRUST, that in case a separation shall take place by reason of any disagreement or otherwise between the said (*intended husband*) and (*intended wife*) after the solemnization of the said marriage, then and in such case they the said (*trustees for wife's pin-money*), and the survivor of them, and the executors and administrators of such survivor, and their and his assigns, shall and do, by and out of the rents, issues, and profits of the said hereditaments and premises so limited in use to them as aforesaid, during so long as they the said (*intended husband*) and (*intended wife*) his said intended wife shall live separate and apart from each other, raise and levy one further or other annuity or yearly sum of £ of lawful and current money aforesaid, over and above and besides the hereinbefore last-mentioned annuity or yearly sum of £, free and clear of and from all taxes, charges, assessments, and impositions or deductions whatsoever, and shall and do, from time to time, pay the same annuity or yearly sum of £ unto such person and persons as the said (*intended wife*) shall from time to time, notwithstanding her coverture, by any notice in writing under her hand, direct or appoint; and in default of and until such direction or appointment shall be made, do and shall pay the same an-

To raise a further sum for wife in case of separation.

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MARRIAGE.

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Freeholds.
(Full Form.)*

the executors and administrators of the survivor, and their and his assigns, do and shall, from time

nuity or yearly sum of £ , or so much thereof of which no such direction or appointment shall be made, into the proper hands of her the said (*intended wife*) for her own sole and separate use and benefit, so and in such manner and to the intent that the same may not be subject or liable to the control, order, direction, debts, engagements, or incumbrances of the said (*intended husband*), but may be absolutely at her own separate and independent disposal as if she were sole and unmarried, for her support and subsistence; and the receipt or receipts of her the said (*intended wife*) under her hand, or the hand or hands of such person or persons to whom she shall from time to time direct or appoint the said annuity or yearly sum of £ , or any part thereof, to be paid, shall from time to time, notwithstanding her coverture, be a sufficient discharge for so much thereof as in such receipt or receipts shall be acknowledged to be received. PROVIDED ALWAYS, that if the said (*intended wife*) or any person or persons on her behalf, in case such a separation shall take place, shall at any time thereafter commence or prosecute any suit or suits in any court or courts of law or equity, to enforce the said (*intended husband*) to cohabit with the said (*intended wife*), or to compel him to pay or allow unto her for alimony or maintenance, any sum or sums of money other than or besides the said annuities or yearly sums of £ and £ hereby provided for her under the trusts of the said term of ninety-nine years as aforesaid, or if the said (*intended husband*) his heirs, executors, or administrators, shall be compelled to pay any sum or sums of money for any debt or debts which shall or may be contracted by the said (*intended wife*), or for or in respect of any trespass or other matter or thing which, during such separation, shall be by her committed, done, or occasioned; or if the said (*intended wife*) shall be guilty of any adulterous intercourse; or

If husband
obliged to pay
debts of wife,
or they again
cohabit toge-
ther,

Or she commit
adultery.

to time, after full payment and satisfaction of the said annuity or yearly sum of £ , and all costs and expenses attending or in any wise relating to the execution of the trusts respecting the same, permit and suffer the residue and overplus of the rents, issues, and profits of the said premises, to be had and received by the said (*intended husband*) or his assigns, during the term of his natural life, to and for his and their own use and benefit. PROVIDED ALWAYS, and it is hereby declared and agreed, that if the said (*intended husband*) do and shall, during the joint lives of them the said (*intended husband*) and the said (*intended wife*) his intended wife, well and truly pay, or cause to be paid into the hands of her the said (*intended wife*), for her separate use and disposal, or to such person or persons as she shall appoint to receive the same as aforesaid, the said clear yearly sum of £ of lawful money aforesaid, by equal quarterly payments, on the days and in the manner hereinbefore appointed for payment thereof, then and in such

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Provide that the husband, on payment of the said annual sum, may receive the whole rents.

if and when they the said (*intended husband*) and (*intended wife*) shall again cohabit together as husband and wife, Then and in either of the said cases, and from thenceforth (all expenses incurred in the execution of the said trust being paid or satisfied) the said yearly sum of £ shall cease and be extinguished, and the said premises comprised in the said term of ninety-nine years, shall thenceforth be exonerated and discharged from the levying and raising the same."

The annuity to
cease.

SETTLEMENTS.

MARRIAGE.

*Settlement of
Freeholds.
(Full Form.)*

Covenant by intended husband, to pay the said annual sum to the wife for pin-money.

Proviso, that no more than one year's arrear of pin-money shall be recoverable.

Covenant to pay.

case it shall be lawful for the said (*intended husband*) and his assigns, to receive and take the whole of the rents, issues, and profits, of the premises comprised in the said term of ninety-nine years, to and for his and their own use and benefit. AND the said (*intended husband*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and declare, with and to the said (*last-mentioned trustees*) respectively, their executors, administrators, and assigns, that he the said (*intended husband*) shall and will, from time to time during his life, well and truly pay (1), or cause to be paid, into the proper hands of the said (*intended wife*), or unto such person or persons as she shall appoint to receive the same, for her, his, or their own separate and sole use and disposal, the clear yearly sum of £ , at the times and in the manner hereinbefore appointed for payment thereof, and according to the true intent and meaning of these presents. PROVIDED ALWAYS nevertheless, and it is hereby declared and agreed, that neither the premises comprised in the said term of ninety-nine years, nor the said (*intended husband*), his heirs, executors, or administrators, shall be in any wise liable to answer or pay, nor

(1) This covenant by the husband to pay the wife's annuity will not exonerate the settled estates, which will nevertheless be considered as the primary fund for payment, and the husband's covenant merely as an auxiliary security; see *Lechmere v. Carleton*, 15 Ves. 193.

shall the trustees or trustee of the same term for the time being, by any of the ways or means hereinbefore mentioned, levy or raise, or be authorized to levy or raise at any one time, more than one year's arrears of the said yearly sum of £ , due previously to the time of levying or raising, or proceeding or attempting to levy or raise the same, over and besides the costs, damages, and expenses incurred or sustained by the non-payment thereof, any thing hereinbefore contained to the contrary notwithstanding (1). PROVIDED ALWAYS, and it is hereby declared and agreed by and between the several parties to these presents, as far as they are respectively interested, that from and immediately after the decease of either of them the said (*intended husband*) and (*intended wife*), and full payment and satisfaction of all arrears which shall be then due of the said annuity or yearly sum of £ , and all costs, damages, and expenses, which may have been incurred or sustained by her the said (*intended wife*) or her appointees, or the said (*last-mentioned trustees*), by reason of any non-payment or detention of the same, or any part thereof, or in the execution of the trusts of the said term of ninety-nine years, or otherwise in relation thereto, the said term of ninety-nine years of and in the messuages, lands, and hereditaments therein comprised, or so much thereof as shall not have been

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Cesser of 99
years term.

(1) See *ante*, p. 302, n. (2).

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MARRIAGE.

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Freehold.
(Full Form.)

Declaration of
trusts of one
thousand years
term.

To permit re-
versioner to re-
ceive, &c. till
default in pay-
ment of wife's
jointure.

assigned or disposed of for the purposes last aforesaid, (but subject and without prejudice to any such assignment or disposition) shall cease, determine, and be absolutely void to all intents and purposes whatsoever, any thing herein contained to the contrary thereof in any wise notwithstanding. AND as to and concerning the said term of one thousand years hereinbefore limited in use to the said (*trustees for raising portions, &c.*) their executors, administrators, and assigns, of and in the said messuages, lands, and hereditaments, as aforesaid, it is hereby declared and agreed by and between the several parties hereto, so far as they are respectively interested, to be the true intent and meaning of these presents, that the same term and the hereditaments therein comprised, is and are so limited to the said (*trustees*) upon the trusts, and to and for the ends, intents, and purposes, and under and subject to the provisos hereinafter declared or expressed concerning the same, that is to say, UPON TRUST until default shall happen to be made in some quarterly or other payment of the said annuity, yearly rent charge, or annual sum of £ hereinbefore provided for the said (*intended wife*) in case she shall survive the said (*intended husband*) her intended husband, at the times or in the manner hereinbefore appointed or expressed for payment thereof, to permit and suffer the person or persons, who from time to time, and for the time being, shall or may be entitled under or by virtue of the limitations herein-

before contained of or concerning the same messuages, lands, tenements, and hereditaments, expectant on the determination of the said term, to receive, take, and retain the rents, issues, and proceeds thereof, to and for his and their own use and benefit. AND UPON THIS FURTHER TRUST, that in case the said annuity, yearly rent charge, or annual sum of £ , or any part thereof, shall at any time be in arrear and unpaid for the space of forty days next after any of the days or times, at or upon which the same is hereinbefore made payable as aforesaid, then and in such case, and so often as the same shall happen, it shall be lawful for the said (*trustees for raising portions*) and the survivor of them, and the executors and administrators of such survivor, and their or his assigns, although no formal or legal demand shall have been made of the same, or of the arrears thereof, and he and they are hereby expressly authorised, from time to time, to enter into and upon all and every or any part or parts of the said messuages, lands, tenements, hereditaments, and premises so limited in use to them as aforesaid; and by and out of the rents, issues, and profits thereof, or by mortgage, sale, or other disposition of the said term, or any part thereof, or of all or any part of the messuages, lands, hereditaments, and premises therein comprised, or by bringing actions against the tenants or occupiers of the same hereditaments and premises, or by all or any of the said ways and means, or other

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*Settlement of
Freeholds.
(Full Form.)*

Further trust to
levy arrears.

SETTLEMENTS.

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Freeholds.
(Full Form.)

Further trust to
raise portions
for younger
children.

lawful ways or means whatsoever, to levy, raise, and pay the said annuity, yearly rent-charge, or annual sum of £ , or so much thereof as shall be so from time to time in arrear; together with all such costs, damages, and expenses, as she the said (*intended wife*) or her appointees, or the said (*trustees for raising portions*) their executors, administrators, and assigns, or any of them, shall or may expend, sustain, or be put unto by reason of the non-payment of the same, or any part thereof, or in the execution of the said trusts, and to pay the overplus (if any) which shall arise by the ways and means aforesaid, to the person or persons who shall be entitled to the said premises next in remainder expectant upon the determination of the said term. AND UPON THIS FURTHER TRUST (1), that in case there shall be one or more child or children of the said (*intended husband*) on the body of the said (*intended wife*) his intended wife to be begotten, (other than and besides an eldest or only son), they the said (*trustees for raising portions*) and the survivor of them, and the executors and administrators of such survivor, and their and his assigns, do and shall after the decease of the said (*intended hus-*

Portions out of
reversionary
term.

(1) The court leans against a constructive intention to raise portions or maintenance out of a *reversionary* term.—Where, therefore, this is meant to be done, it should be expressly so declared; *vid. Clinton v. Seymour*, 4 Ves. jun. 440.

band) and (*intended wife*) his intended wife, by demise, mortgage, sale, or other disposition, either at one time or several times, of the several messuages, lands, tenements, hereditaments, and premises comprised in the said term of 1000 years, or any part or parcel thereof, for all or any part of the said term, or by and out of the rents, issues, and profits thereof (1), or by bringing actions against the tenants or occupiers of the said premises for arrears of rent, or by all or any of the said ways or means, or such other lawful ways or means as they the said last-mentioned trustees or trustee shall think fit, and in case of any mortgage of the said premises, or any part thereof, by sale of the premises so mortgaged, or any other part thereof, for the purpose of paying off, redeeming, or extinguishing the said mortgage (2), levy and raise such sum and sums

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(1) It is holden, that a trust to raise portions out of the rents and profits only, will give the trustees a power to sell or mortgage the estate for that purpose; *Sheldon v. Dormer*, 2 Vern. 310. *Ivy v. Gilbert*, Prec. Ch. 583. 2 P. Wms. 13, S. C. 2 Brow. P. C. 468, S. C. 1 Ves. jun. 334; but in order to facilitate these transactions, should they be found necessary, it is better to give the trustees an express authority for that purpose.—As to the construction of a trust for raising portions, so far as regards the time at which they are to be raised, see *Codrington v. Ld. Foley*, 6 Ves. jun. 364.

Power of sale,
&c.

(2) As it has been questioned whether, where trustees have mortgaged premises under a power to raise portions or the like, they can sell any part of the same premises for the purpose of paying off such mortgage, see *Palk v. Ld. Clinton*, 12 Ves. jun. 48, *ante*, Vol. VI. p. 412, n. (19), this power should be expressly given to them.

Sale of mort-
gaged premises.

SETTLEMENTS.

MARRIAGE.

Settlement of
Freeholds.
(Full Form.)If only one
younger child,
to —To be paid at
such times as
husband shall
appoint.

for the portion or portions of the said child or children, (except an eldest or only son) (1) as is or are next hereinafter mentioned, (that is to say) in case there shall be but one child of the said (*intended husband*) by the said (*intended wife*) his said intended wife, besides an eldest or only son, the sum of £ of lawful money of that part of the United Kingdom of Great Britain and Ireland called England, for the portion of such younger child, be the same a son or daughter, and to be paid and payable, and to be or become a vested interest, at such time and in such manner after the decease of the survivor of them the said (*intended husband*) and (*intended wife*) his intended wife (2), as the said (*intended husband*) at any one time or at several times, by any deed or instrument in writing, with or with-

Younger or
elder son.

(1) In equity every child is considered as a younger child for the taking under the provisions of the settlement, except the heir; an eldest daughter is therefore a younger child if there be a son of the marriage; *Beale v. Beale*, 2 P. Wms. 244; and on a similar principle a younger son, on becoming the elder by the death of his brother, will lose the provision made for him as one of the younger children of the marriage; *Teynham v. Webb*, 2 Ves. sen. 198; and see *Duke v. Doidge*, *ib.* 203, n. (a), and *Lady Lincoln v. Pelham*, 10 Ves. jun. 166.

Time of vesting.

(2) Where portions are directed to be paid or transferred at twenty-one or marriage, but if such events happen in the lifetime of the parents, to be postponed until their death, with survivorship on the decease of any child before his share shall become payable, the interest vests in the children on attaining twenty-one or marriage, although the parents be living, *Schenck v. Leigh*, 9 Ves. jun. 300, 311; and *vid.* *King v. Hake*, *ib.* 438; and *Powis v. Burdett*, *ib.* 428.

out power of revocation and new appointment, to be sealed and delivered by him in the presence of two or more credible witnesses, or by his last will and testament in writing, to be by him signed and published in the presence of three or more credible witnesses shall direct or appoint (1), and in default of such direction or appointment, the same to vest in such child, being a younger son, at his age of twenty-one years, or, being a daughter, at her age of twenty-one years, or day of marriage, [with the consent of the said (*husband*) (2)] whichever shall first happen, and to be paid and payable to him or her at the same age or time, provided the same do not happen until after the decease of the survivor of them the said (*intended husband*) and (*intended wife*); but if the same shall happen in the life-time of the said (*intended hus-*

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In default of
appointment at
21 or marriage.

(1) As powers of appointment of uses are frequently given to married women, to fathers or mothers, &c. in favour of one or more of their children, such powers should in general be shackled with such requisition of consent of third persons signing and sealing in the presence of a certain number of witnesses or other circumstance, as may have a tendency to prevent the appointor from being taken by surprise, and induced at an unguarded moment to exercise the power contrary to the general welfare of the family; therefore although a power of appointment of such estate may be reserved to be exercised by will without its being executed according to the statute of frauds, see *ante*, Vol. I. p. 449, n. (2), it is better that it should be so restricted.

Powers of appointment in marriage settlements.

(2) It is now fully settled that a condition in restraint of marriage without consent is valid; *Dashwood v. Ld. Bulkeley*, 10 Ves. 230. *Lloyd v. Branton*, 3 Mer. 116. *Malcolm v. Callagan*, 3 Mad. 349.

Consent.

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If more than
one younger
child, to —

band) and (*intended wife*) or of the survivor of them, then the portion of such younger child to be postponed until the decease of the survivor of them the said (*intended husband*) and (*intended wife*), unless they jointly, during their lives, or the survivor of them after the decease of the other, shall by writing under their, his, or her hands and seals, or hand and seal, signify a desire that the same shall be sooner raised and paid.

AND in case there shall be two children and no more, whether sons or daughters, (other than and besides an eldest or only son) of the said (*intended husband*) by the said (*intended wife*) his said intended wife, then the sum of £ of such lawful money as aforesaid, for the portions of such two children; and in case there shall be three, or any greater number than three children, whether sons or daughters, (other than and besides an eldest or only son) of the said (*intended husband*) by the said (*intended wife*) his intended wife, then the sum of £ of like lawful money, for the portions of such three or more children, which said sum of £ or £ so to be raised for the portions of such younger children (1),

Appointment
to younger
children.

(1) The terms elder and younger have reference in these limitations to the estate, and not to primogeniture; every child is therefore considered as coming within this description, except the heir or person taking the estate under the limitations; and hence a younger son becoming an eldest, is not within a power to appoint to younger children; *Beale v. Beale*, 2 P. Wms. 244. *Chadwicke v. Doleman*, 2 Vern. 528. *Teynham v. Webb*,

(being more than one) shall be paid and payable, and become a vested interest in such children respectively, or in or to any one or more of them, exclusively of the other or others of them (1), or in or to his, her, or their issue (2), at and upon such ages, days, or times, and in such shares and

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2 Ves. 190, (*sed vid. contr. Leake v. Leake*, 10 Ves. jun. 477, under the circumstances of the case); and should an appointment have been previously made to him, it will be ineffectual, *Broadmead v. Wood*, 1 Brow. Ch. Ca. 77. And so a daughter, although the eldest child, is within the power to appoint to younger children, *Pearson v. Garnet*, 2 Brow. Ch. Ca. 38. And an eldest son may be the object of a like power where the estate (as in Borough English) goes to the younger son, *Duke v. Doidge*, cited 2 Ves. jun. 203. *Emery v. England*, 3 Ves. jun. 232.

(1) As it has been holden that a power to appoint between and amongst the children of the marriage in such shares, &c. as the parents shall appoint, will not authorise an appointment to one or more of such children, in exclusion of the rest; see *Pocklington v. Bayne*, 1 Brow. Ch. Rep. 450; *Alexander v. Alexander*, 2 Ves. jun. 640; *Kemp v. Kemp*, 5 *ib.* 849; and as it may happen, that some of them may have a provision made for them, independently of the present settlement, it is reasonable, in most cases, that the father should have the power of making such an appointment to or amongst any one or more of the children, in exclusion of the others, as their respective exigencies may require.

Exclusive appointment.

(2) A power of appointment is usually confined to such children of the parents as the appointor shall direct; but as this has been held not to enable the appointor to exercise the power in favour of the issue of such children (see *Brudenell v. Elves*, 1 East, 422, 7 Ves. jun. 382, *S. C. Butcher v. Butcher*, 9 *ib.* 383) who on the decease of the parents are frequently more in need of the appointor's bounty than the surviving children, care should be taken in settlements to extend the powers of appointing amongst the issue of such children who may die.

Issue.

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In default of
appointment to
children equally.

proportions, and be subject to such charges, provisos, conditions, and limitations over, to, among, or in favour of any one or more or other or others of them, and in such manner and form in all respects as the said (*intended husband*) at any one or more time or times, and from time to time, by any deed or deeds, or writing or writings to be by him sealed and delivered in the presence of and attested by two or more credible witnesses (1), or by his last will and testament in writing, to be signed and published by him in the presence of and attested by three or more credible witnesses, shall either absolutely or with a power of revocation and new appointment (2) direct or appoint; and in default of such direction or appointment, then in trust to pay, apply, or dispose of the said sum of £ , or £ , as the case may be, equally between or amongst such younger children, share and share alike, and his, her, or their portion or respective portions, or shares, in the said sum or sums, shall be and become a vested interest or vested interests, and be paid and payable to them re-

(1) See *ante*, Vol. I. No. XXVI. p. 449, n. (1).

(2) In giving a power to appoint amongst children or near relations, where the appointment is designed as a bounty or act of affection, the power should extend to enable the appointor to revoke any appointment and reappoint, &c. that an unwary appointment may be defeated if there should be occasion, and in an appointment under such power a new power of revocation, &c. should also be reserved.—See *ante*, Vol. I. No. XXVIII. p. 448, n. (1).

spectively, at the age and times following, that is to say, the share or shares of such of them as shall be a son or sons, at his or their age or respective ages of twenty-one years; and the share or shares of such of them as shall be a daughter or daughters, in her or them, at her or their age or respective ages of twenty-one years, or day or respective days of marriage (1), which ever shall first happen, and to

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(1) Estates and other provisions for children are usually limited to vest in daughters at twenty-one or marriage, but if sons not till that age. If, therefore, a son marry and die before that age, which is by no means an uncommon or improbable event, his children will take no share of the provision; nor will the usual power of appointment given in settlements and wills enable the grandfather or mother to appoint to such grandchildren; the portions of sons should therefore be made to vest at twenty-one, or upon their decease before that age, leaving issue then living, or born in due time thereafter.

Vesting of portions; see ante, p. 245.

But why, it may be inquired, is the payment to be postponed to the sons till twenty-one, whilst it is to be paid to the daughters on their marriage, even though under that age? The reason (understanding the word as explained by Blackstone, i. e. the legal reason) is obvious, because till twenty-one he is, in contemplation of law, not of years of discretion, and consequently not fit to be entrusted with his portion; he is unable to marry, and if designed for a trade or profession would not be out of his pupillage till that age, and consequently can have no occasion for his fortune, either to set up in business, or to meet the wants of a family. And should any part of his fortune be wanted for his advancement in life in the army or otherwise, the trustees have power to advance it. But a woman is of full age on her marriage, and therefore of legal discretion, and her not being morally so is no objection, as her fortune, on her becoming covert, is under the management of her husband.

Sons at twenty-one, daughters on marriage.

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Portions postponed till parents' death; see ante, p. 245.

be paid to him, her, and them respectively at the same age or time, or respective ages or times, in case the same shall take place after the decease of the survivor of them the said (*intended husband*) and (*intended wife*) his said intended wife, but in case any of such younger children being a son or sons, shall attain his or their age or respective ages of twenty-one years, or being a daughter or daughters, shall attain her or their age or respective ages of twenty-one years, or be married in the lifetime of the said (*intended husband*) and (*intended wife*), or of the survivor of them, then the payment of his, her, or their share or shares shall be postponed until after the decease of the survivor (1) of them the said (*in-*

Postponement of portions.

(1) The proviso that the portions of children attaining twenty-one or marriage in the lifetime of their parents, shall be postponed till the death of the surviving parent, was originally introduced to obviate the inconvenience which arose from the courts giving interest after those periods on account of the portions being then vested; see *Willis v. Willis*, 3 Brow. C. C. 54; and *Emperor v. Wolfe*, 1 Ves. 208; the clause, however, does not prevent the portions vesting and going to the representatives of any child dying in the lifetime of the parents, should they arrive at that age or time; *Hope v. Clifton*, 6 Ves. 499; *King v. Hake*, 9 *ib.* 438; unless it is followed by a proviso showing a contrary intent by giving the portion over on the child's death; *Codrington v. Toley*, 6 Ves. 379; *Schenck v. Legh*, 9 *ib.* 300; *Powis v. Burdett*, *ib.* 428.

But as it has been doubted, whether such portions be vested, where there is a limitation over (as is usual) in default of children, or in case of the death of all of them before their portions shall have become payable, *Legh v. Haverfield*, 5 Ves. jun. 452,

tended husband) and (*intended wife*) his said intended wife, unless they jointly, during their lives, or the survivor of them after the decease of the other of them, shall by any writing under their, his, or her hands and seals, or hand and seal, direct or desire, that the same, or any part thereof, shall be sooner raised and paid. PROVIDED ALWAYS, and it is hereby further declared and agreed by and between the parties hereto, that in case any appointment shall be made by the said (*intended husband*) in pursuance of the power hereinbefore contained for that purpose, of or concerning the sum or sums hereby directed to be raised for the portion or portions of any younger child, or the younger children of the said intended marriage, or any part thereof, to or in favour of any one or more of such children, no such child or children who shall take any part or share of the said sum or sums under or by virtue of such appointment, shall be entitled to any further or other part or share of and in the remaining or unappointed part or parts of the said monies (unless by the said appointment it shall be otherwise declared or expressed), until he, she, or they shall have brought the sum so appointed to him, her, or them, into hotchpot for

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In case of a partial appointment, appointed part to be brought into hotchpot.

and *cid.* 9 *ib.* 311; this question should be prevented from arising by express provisions. And if the portion of a daughter were not to vest in her till twenty-one she could not on her marriage settle it on herself or children; and if it be not payable to her on her marriage she might lose an eligible match or the jointure her fortune would entitle her to.

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Proviso for
survivorship
between the
children.

the benefit of the other of the said children or child, for whom a portion is hereby intended or directed to be raised as aforesaid. PROVIDED ALWAYS, and it is hereby agreed and declared by and between the said parties hereto, that in case there shall be more than one younger child of the said intended marriage, for whom portions are hereby provided as aforesaid, and any one or more of them being a son or sons, shall depart this life, or become an eldest or only son before he or they respectively shall attain the age of twenty-one years, or being a daughter or daughters, shall depart this life before she or they respectively shall attain that age or be married, then and in such case (no direction or appointment being made or given by the said (*intended husband*) to the contrary in pursuance of the power hereinbefore contained for that purpose, and subject to such as shall be so made or given, if any), the portion or share of every such son so dying or becoming an eldest or only son, and of every daughter so dying under the age of twenty-one years, and without having been married, of or in the said sum of £ so to be raised as aforesaid, or so much and such part thereof as shall not have been then raised and applied for his or her benefit, in pursuance of the power hereinafter provided for that purpose, shall accrue and belong to the survivor or survivors (1), or other or others of such chil-

Survivorship
amongst
children.

(1) Without this declaration, the portion of a child dying before his or her portion becomes vested, would sink into the

dren, (except an eldest or only son) and shall vest in and be paid to such surviving or other child, if but one, and if more than one, then to vest in and be paid to such surviving or other children in equal parts, shares, and proportions, at or upon such and the same ages, days, and times respectively, and in such and the same manner in all respects as is hereinbefore declared or expressed relative to or concerning his, her, or their original share or shares of or in the said sum or sums, or as nearly thereto as circumstances will permit; and in case any or either of the said children to whom any such share or portion shall accrue or survive upon the decease of his, her, or their brother or sister shall die, or being a son or sons, shall become an eldest or only son, before such accruing or surviving part or share, or parts or shares, shall become vested in him, her, or them, then and in such case, and from time to time as often as the same shall happen, (in default of, or subject to any such appointment to the contrary as aforesaid) all and every such accruing or surviving part or share, or parts or shares, or so much thereof as shall not have then been appointed for the benefit of such surviving child or children, under the provisions hereinafter contained for that purpose, shall be subject and liable to such and the same or the like clause or provi-

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estate for the benefit of the heir, and not survive to the other children, see 3 Elem. Conv. 2d Ed. p. 447, *et seq.*

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No child to have
more than a
given sum; see
ante, p. 245.

sion and benefit of accruer (1), and shall accordingly accrue and survive to the remaining or others or other of the said surviving children or child, and be paid and payable to him, her, or them, at the same time and in the same manner as is hereinbefore declared or expressed touching his, her, and their original share or shares, of or in the same sum or sums, so nevertheless that no one of the said children shall, by survivorship or otherwise, have or be entitled to more than the sum of £ for his or her portion, nor any two of such children to more than the sum of £ between them, for their respective portions; it being hereby declared and agreed, that if by reason or virtue of such survivorship or otherwise, any such child or children shall, under the trusts and provisions hereinbefore contained, be entitled to a greater sum than £ or £ (as the case may be) for his, her, or their portion or portions, the residue or surplus of the sum or sums hereinbefore directed to be raised for any younger child, or the younger children of the said intended marriage, above or exceeding the said sum or sums of £ or £ , shall sink into the lands and hereditaments charged with the

Accruing shares.

(1) As the accruing shares coming to either of the children by the death of the others is considered as a new acquirement, it will not survive to the others on his or her death, without an express declaration to that effect; see *Rudge v. Barker*, Ca. T. Talb. 124; *Bayne v. Benson*, 3 Atk. 80; *Perkins v. Micklethwaite*, 1 P. Wms. 275.

payment thereof, and shall not be raised or payable (1). AND UPON THIS FURTHER TRUST, that

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(1) Where any apprehension is entertained that the children of the marriage may be persuaded to adopt a religion enjoining or encouraging a life of celibacy, the following provision is sometimes inserted :

Reduction of
portions on pro-
fessing celibacy.

“ PROVIDED ALWAYS NEVERTHELESS, and it is hereby declared and agreed between and by the parties to these presents, that if any daughter or daughters, younger son or younger sons of the body of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, shall at any time or times, before he, she, or they shall attain his, her, or their age or respective ages of twenty-one years, be engaged in or dependant upon any society or community of people residing in parts beyond the seas, have made any solemn declaration to remain under such engagement or dependency, unmarried, or shall at any time or times before he, she, or they shall attain his, her, or their age or respective ages of twenty-one years, make any solemn declaration or be under any obligation of celibacy, then and in such case the portion or portions of such daughter or daughters, and younger son or younger sons, shall be reduced to and be only £ a piece; and the residue of the portion or portions hereby or otherwise intended for such daughter or daughters, or younger son or younger sons, shall in such case go and be paid to such other daughter or daughters, and younger son or younger sons, as shall not be engaged in or dependant upon any such society or community of people, or who shall not have made such solemn declaration or be under such obligation as aforesaid, and shall vest in and be paid to such younger son or younger sons, or daughter or daughters respectively, at such ages, and days, or times, and with such benefit and right of accruer or survivorship between or among them, (if more than one) as are hereinbefore mentioned respecting his, her, or their original portion or portions.”

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Provision for
maintenance
and education ;
see *ante*, p. 246.

they the said (*trustees for raising portions*) and the survivor of them, and the executors or administrators of the survivor, and their or his assigns, do and shall after the decease of the said (*intended husband*) and (*intended wife*) his intended wife, (in default of or subject' to any appointment by the said (*intended husband*) as aforesaid) by and out of the rents, issues, and profits of the messuages, lands, and hereditaments comprised in the said term of one thousand years, levy and raise for the maintenance and education of the child or children of the said intended marriage for whom a portion or portions is or are hereby provided as aforesaid, such yearly sum or sums of money as hereinafter is or are mentioned, until their respective portions shall become payable under or by virtue of the trusts or agreements hereinbefore contained for that purpose, that is to say, for each of the said children until he or she shall attain his or her age of twelve years, such yearly sum as shall be equal to the interest of the portion hereby provided or intended for him, her, or them respectively (1), after the rate of £3 by the year for every one hundred pounds of such portion, and from and after the age of twelve years, such yearly sum for every such child

Interest of
portions.

(1) If portions be given over on death, under twenty-one, or marriage, the trustees are not authorised to apply the interest for maintenance, unless expressed, directed, or authorised to do so; see *Farrington v. Green*, 10 Ves. 48; *Errington v. Chapman*, 12 *ib.* 20.

as shall be equivalent to the interest of the portion hereby intended for him or her as aforesaid, after the rate of £5 for every one hundred pounds by the year, and pay and apply the same for the maintenance and education of the said children or child accordingly, either to the person or persons who for the time being shall be educating or maintaining him, her, or them respectively, or to the guardian or guardians (if any) of such children or child respectively, to be by such guardian or guardians applied for the same purpose; and it is hereby agreed and declared, that the sum or sums so to be raised for maintenance and education as aforesaid, shall be raised and paid by even and equal half yearly payments, on the days following, that is to say, on the day of , and the day of , in each and every year, during the minority of the said children respectively, the first payment thereof to begin and be made on such of the said days as shall next happen after the decease of the survivor of them the said (*intended husband*) and the said (*intended wife*) his intended wife. PROVIDED ALWAYS (1), and it is hereby agreed and declared by and between the said parties hereto, that not-

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Power to raise portions during minority of children for their advancement.

(1) It is essential that trustees should have a power of applying a part of the children's portions for their advancement in life, as it is a general rule that a trustee cannot, of his own authority, break in upon the principal of the infant's fortune; *Walker v. Wetherell*, 6 Ves. jun. 473; and *vid. Codrington v. Ld. Foley*, *ib.* 364.

Power of advancement necessary.

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withstanding any thing hereinbefore contained, it shall be lawful for the said (*trustees for raising portions*) and the survivor of them, and the executors and administrators of the survivor, and their and his assigns, at any time or times after the decease of the survivor of them the said (*intended husband*) and (*intended wife*) his intended wife, or in his, her, or their lifetime, by or with their, his, or her direction or consent, to be testified by some writing under their hands and seals during their joint lives, or the hand and seal of the survivor of them, after the decease of either of them (but subject in all cases to the power of appointment and to other the powers, trusts, and provisos hereinbefore contained) by any such demise, mortgage, sale, or other disposition of the hereditaments comprised in the aforesaid term of one thousand years, or any part thereof, to levy and raise the whole or any part of the portion or portions hereby intended and provided for such of the children of the said intended marriage, as for the time being shall be a younger son or younger sons, for the purpose of placing him or them in the army or navy, or in any profession or employment, or otherwise for his or their promotion in the world or advancement in life, although his or their said portion or portions, or presumptive portion or portions shall not then have become payable or vested. PROVIDED ALWAYS nevertheless, that no demise, sale, mortgage, or other disposition of the said term, or of the hereditaments therein comprised shall be made for

No sale until a portion shall become payable; see *ante*, p. 246.

raising such portion or portions as aforesaid, or any part thereof respectively, until some one of the said portions shall have become actually payable under or by virtue of the provisos or declarations hereinbefore contained concerning the same, unless by or with such direction or consent as lastly is hereinbefore mentioned, but the rents and profits only of the said hereditaments shall be applicable to or for the trusts and purposes of the said term. AND UPON FURTHER TRUST, that they the said (*trustees for raising portions*) and the survivor of them, and the executors and administrators of the survivor, and their and his assigns, do and shall, until some or one of the portion or portions hereinbefore provided for the younger children of the said intended marriage shall become payable, permit and suffer the person or persons to whom the reversion or remainder, of or in the said hereditaments comprised in the said term of 1000 years, immediately expectant upon the determination thereof, shall, for the time being, belong, to receive the residue or surplus of the rents, issues, and profits, which shall remain after payment of such yearly sum or sums as is or are hereinbefore directed to be raised for the maintenance and education of the said children respectively, and performance and satisfaction of other the trusts hereby declared of or concerning the same term and premises. PROVIDED ALWAYS, and it is hereby further declared and agreed, that in case the said (*intended husband*) in his lifetime, or by his last

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The persons in remainder, to receive the overplus.

Money advanced by the father to be in part of portions.

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will and testament (1), or any codicil thereto, shall give or advance any sum or sums of money or other property, for or towards the promotion or advancement in life of any of the said children, being a younger son or younger sons, or being a daughter or daughters upon her or their marriage, then and in such case the sum or sums so to be advanced, if greater than or equal to the portion or portions hereinbefore provided or intended for such child or children respectively, shall be accounted in full of the portion or portions of, or for the child or children respectively, to whom or for whose benefit the same shall have been paid or given; and if such advanced sum or sums be less than the portion or portions hereinbefore provided or intended for such child or children respectively, then the same shall be accounted as part of the portion or portions of the said children respectively, unless he the said (*intended husband*) shall otherwise declare or direct, by some writing under his hand, attested by two or more credible witnesses. [PROVIDED ALSO, and it is hereby fur-

Cesser of the
term of 1000
years.

Accrues to
children.

(1) It has been determined, that property coming to children by the death of the father intestate, is not within the meaning of the usual clause in settlements, that sums given them for their advancement in his lifetime shall go in satisfaction of the portions directed to be raised for them, *Twysden v. Twysden*, 9 Ves. jun. 415. But as it has been doubted whether a provision made for them by his will, or lands coming to them by descent, ought to be considered as such satisfaction (see *ib.* 425), it will be proper to declare expressly whether this shall be so or not.

ther declared and agreed by and between the said parties to these presents, that in case the trusts hereinbefore declared of or concerning the said term of 1000 years hereinbefore limited in use to the said (*trustees for raising portions*) as aforesaid, shall not arise or take effect, and when and as soon as the same shall have been fully performed or satisfied, or shall become unnecessary or incapable of taking effect, or in case the sum or sums to be raised by means thereof shall be paid by the person or persons who shall be entitled to the hereditaments therein comprised next in remainder expectant upon the said term (†), and the costs, charges, and expenses of the trustees of the said term, and of their respective executors and administrators in and about the execution and performance of the trusts thereof, shall have been fully paid and satisfied (and which they are hereby expressly authorised and empowered to levy and raise by all or any of the ways and means aforesaid, and to retain accordingly) then and

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(†) Trusts to raise sums of money in gross, are said to be *satisfied or become unnecessary*, when the owner of the land pays them off out of his own money. A trust to raise an annuity or sum of money for the payment of portions, is said to be *determined* when the annuitant dies, or the portions are received. And trusts *are incapable of taking effect*, when the event upon which they are directed to be exercised does not happen: as if there is a direction, that in case the settler shall have an eldest or only son, and other children, his trustees shall raise portions for the younger children, and he has no younger children; or if he direct, that if his wife shall survive an eldest son, she shall have an additional annuity, and she dies in the son's lifetime, such trusts are incapable of taking effect.

Satisfaction of trusts.

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Covenant by husband in case of deficiency of rents to keep down interest of sums raised by mortgage for children's portions.

from thenceforth the said term of 1000 years of and in the said premises, or so much thereof as shall remain unsold and undisposed of for the purposes aforesaid, shall cease, determine, and be utterly void (1) to all intents and purposes whatsoever, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding, but without prejudice nevertheless to any sale, mortgage, or other disposition which shall or may have been previously made thereof, or of any part thereof, or of the hereditaments therein comprised for any of the same purposes.] AND the said (*intended husband*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said (*trustees for raising portions*) their executors, administrators, and assigns, that in case any sum or sums of money shall, after the decease of the said (*intended hus-*

Term to attend.

(1) *Or*, it may be directed that the term

“ Shall be assigned and disposed of as he the said (*husband*) shall direct or appoint.”

It is usual, upon the creation of terms in marriage settlements for raising portions for younger children, &c. to declare, that should the trusts for which the term was created not arise, or become unnecessary, or incapable of taking effect, or shall be performed, the term shall cease: but as it may be often desirable that terms raised for these purposes shall be kept on foot, the better way should seem to be, to declare that the term should be assigned as the owner of the inheritance shall direct; or the clause of cesser may simply be omitted, in which case it will be subject to his direction without any express declaration to that effect, as being necessarily attendant upon the inheritance on the trusts being satisfied; see *Maundrell v. Maundrell*, 10 Ves. 270.

band) and in the lifetime of the said (*intended wife*), be raised by mortgage of all or any of the premises comprised in the said term of 1000 years, in part of the portion or portions of a younger child or younger children of the said intended marriage, in pursuance of the power hereinbefore contained for that purpose, then and in such case the heirs, executors, or administrators of the said (*intended husband*), shall and will from time to time, during the life of the said (*intended wife*), well and truly pay and keep down so much of the interest of the said sum or sums of money, as the clear rents and profits of the said premises comprised in the said term, after payment of the said annual sum or yearly rent-charge of £ , and all expenses relating thereto, shall not extend to pay. PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties to these presents, that notwithstanding any of the uses, trusts, limitations, and powers hereinbefore contained or declared, but subject and without prejudice to the said annuity or yearly rent-charge of £ , and the powers of distress and entry, and other powers and remedies hereinbefore provided for securing the payment thereof, it is the true intent and meaning of these presents, and of the parties hereunto, that it shall be lawful for the said (*intended husband*) during his life, and to and for the said (*intended wife*) after his decease, during her life in case she shall survive him, and after the decease of both of them the said (*intended husband*) and (*intended wife*) to and for the

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Power for husband, &c. to grant leases for years; see ante, p. 246.

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said (*trustees to preserve, &c.*) or the survivor (1) of them, or the heirs, {or executors, or administrators} (2) of such survivor, or their or his assigns, [or the executors or administrators of the survivor] during the minority of such person or persons as for the time being shall be entitled in possession to the hereditaments hereby granted and released or otherwise assured (3), by virtue of the limitations hereinbefore contained, and they and each of them are accordingly hereby authorised and empowered by indenture or indentures in writing, under his, her, or their hand or respective hands, or the hand or hands of any attorney or attornies by him or them lawfully authorised in that be-

Survivorship of power.

(1) As a naked power will not survive, it is necessary to give it to the survivor by express words; Dyer, 177, pl. 32; Stile v. Thompson, *ib.* 210, pl. (24); and see *post*, p. 360, n. (1).

"Executors and administrators."

(2) The powers of leasing, selling, &c. are usually given to the survivor of the trustees and his *heirs*; but as there is no legal objection to their being exercised by his executors or administrators, as nominees of the settler for that purpose, and these are less likely to be incapacitated by minority (which would render an application to the court of Chancery necessary), it will be proper in some cases to give the power expressly to them, rather than to the heirs.

Copyholds not within a general power of leasing.

(3) Copyhold lands are not within a general power of leasing, for as a lease is a common law assurance, the effect of leasing copyholds would be to destroy the copyhold tenure and enfranchise the land; Carth. 428. If the estate therefore be copyhold, add,

"And also of the said hereditaments and premises hereinbefore covenanted to be surrendered, if the custom of the manor whereof they are holden will permit the same without forfeiture or prejudice, but not otherwise."

half (1), to be by him, her, or them, sealed and delivered in the presence of and attested by two or more credible witnesses, whether referring or not referring to this present power to grant, demise, or lease, or limit or appoint (2) by way of grant, demise, or lease, all and every or any of the same messuages, lands, tenements, and hereditaments, or any part thereof, to any person or persons for one, two, or three life or lives in being (3), or for any term or number of years

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(1) The donee of a power to lease or do any other particular act (not having an interest) cannot exercise it by attorney, unless he be expressly authorised to do so by the deed by which the power is created; see *Palm. 436. 2 Roll. Rep. 393. Combe's Ca. 9 Co. 75, h. Palliser v. Ord, Bunb. 166. Orby v. Mohun, 2 Vern. 542. Evelyn v. Evelyn, 2 P. Wms. 667*; for such a power being a personal trust delegated to the donee, cannot be transmitted to another, on the maxim that *delegatus non potest delegare*. But there seems to be no reason why the deed itself by which the power is exercised, should not be sealed and delivered by attorney; this being a mere ministerial act performed by the direction of the donee, and as his own proper act; a contrary doctrine, however, has sometimes been attempted to be maintained in practice.

Power to lease
by attorney.

(2) As the execution of powers of leasing, and of sale, exchange, &c. under a marriage settlement, is, in truth, not a conveyance of the land, but only an appointment of an use, the words, "limit and appoint," are now usually adopted as the more technical and accurate mode of expression.

"Limit and
appoint."

(3) Or the power may be to grant leases for "lives, or for years determinable with lives, of such of the premises as have been usually so granted, and building or repairing leases for any term not exceeding ninety-nine years, or for one, two, or three lives, or term for years determinable with lives, to take effect in possession or reversion, but so that the subsisting and reversionary terms do not together exceed ninety-nine years, or

Leases for
lives.

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determinable with or upon one, two, or three life or lives in being, or for any term or number of years absolutely not exceeding twenty-one years from the making thereof respectively, to take effect in possession at the time (1) or within three months next after the making thereof at the farthest, and not in reversion or by way of future interest, otherwise than as aforesaid, nor concurrently with or during the continuance of any lease or term in being (2), so that upon every such lease, limitation, or appointment, there be reserved and made payable half-yearly or oftener, during the continuance thereof, and to be incident to and go along with the reversion expectant

three lives, at any one and the same time, and determinable on the death of the last or surviving life in a term of years determinable on the death of the survivor of three lives in being."

Commencement
of lease.

(1) As it has been strongly contested (although finally otherwise determined) that a lease to take effect "from the day of the date," is a lease in reversion, as not commencing until the day after the making, and therefore not to be sustained under a power to lease in possession; see *Pugh v. Duke of Leeds*, Cowp. 714, and cases there cited; care should be taken to frame the power so as to prevent the possibility of such a construction, as "from the making," "from the sealing and delivery" thereof, or the like; and see *Higham v. Cole*, 2 Roll. Ab. 520, pl. 1, *Clayton's Ca. 5 Co. 1*.

Concurrent
leases.

(2) To prevent a recurrence of the doubts which have been entertained as to whether a power to grant leases in possession, will enable the donee of the power to grant a lease of lands already in lease, without a surrender of the subsisting term; see *Opy v. Thomasius*, 1 Lev. 167, *Sir T. Raym. 132*, 1 *Keb. 778. 910*; *Marq. Antrim v. D. Buckingham*, 1 *Ch. Ca. 17*, 1 *Sid. 101*; *Harcourt v. Pole*, 1 *Anderson, 373*, it will be proper to extend the power in express terms to the granting of concurrent leases.

on the determination of the said term or period, the best and most approved rent or rents which in the opinion of the person or persons hereby empowered to grant or make such leases or appointments (1), can at that time be obtained or reasonably expected for the same (2), without taking any fine or foregift, or any other matter or thing in the nature or in lieu of any fine, foregift, or consideration exceeding the sum of ten shillings (3), other than by way of advance or augmentation of rent upon the surrender of any lease

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(1) The number of questions which have arisen with respect to what shall be considered as the best or most approved rent to be reserved under a power of leasing, seems to make it preferable to leave it expressly to the discretion of the donees of the power when they are indifferent persons; when a discretionary power is held to be good; see *Talbot v. Tipper*, Skin. 427. Improved rent.

(2) Formerly, the practice was to reserve the ancient and accustomed rent which has been reserved for the same premises, and where the settler approves of this mode, it should be declared (to prevent the questions which have arisen from a power so framed), Accustomed rent.

“To be reserved either for the whole of the said messuages, lands, tenements, and hereditaments, or for any part or parts thereof, proportionably and *pro rata*, and whether the said hereditaments and premises have heretofore been leased together, at one and the same rent or separately and in parcel, or otherwise.”

(3) If the lessor were allowed to take a premium on the granting leases, he might at once take the whole value of the term to the prejudice of the remainder man; but as it may in some cases be proper to have a nominal consideration for the purpose of vesting the possession in the lessee by virtue of the statute of uses, it is proper to give permission to receive a pecuniary sum for that purpose. Premium.

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then in being (1), for or in respect of the making or granting thereof (2); and other than a reasonable

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(1) The reservation of an advanced rent by a new lease granted on the surrender of a lease in being, has been, though perhaps without reason, considered as equivalent with the taking of a fine, see *Wilson v. Sewell*, 1 Black. 617, 4 Burr. 1975, S. C. and should therefore be provided for to prevent questions.

Advanced rent.

**Liberty to take
fines.**

(2) Instead of a restriction against a fine or premium being taken where such has been customary, it may be declared that,

“ And if any fine, premium, or foregift be taken or received for the making or granting any such lease or leases aforesaid, there shall always nevertheless be reserved and made payable, a yearly rent or rents, equal at the least, to the rent or rents now reserved or made payable for or in respect of the same premises.”

Or more fully thus,

“ And it is hereby expressly declared and agreed, that upon making any such lease or leases as aforesaid, by virtue of the said power, it shall be lawful for them or him, the said trustee or trustees for the time being, and they and he are and is hereby authorised and empowered by and with such consent, and to be so testified as aforesaid, to take and receive from any person or persons to whom any such lease or leases shall be granted or made, any sum or sums of money for or by way of fine or premium for the said lease or leases, or term or terms thereof granted, but so nevertheless that there shall in every such lease be reserved and made payable, in the manner aforesaid, a yearly rent or yearly rents, which shall be, at the least, equal in amount or value to the rent or rents which are now reserved or made payable for or in respect of such of the premises therein to be comprised, as are now on lease; and two full third parts, at the least, of the annual value to be letten of such of the said premises as are now in the hands of the said (*intended husband*), in order and to the end and intent that the present annual rental, or clear yearly income arising from the said hereditaments, by virtue of the present subsisting leases

abatement of rent in consideration of a sum to be expended by the lessee, his executors, administrators, or assigns, during the same term or period; in repairing or improving the said premises, or some part thereof, and so that every such grant, demise, or lease, or limitation or appointment by way of grant, demise, or lease, shall be so framed as that the lessee or lessees therein named, his, her, or their executors, administrators, or assigns, be not by any clause or words therein contained, or by any implication or inference to be deduced therefrom, in any wise authorised or empowered to do or commit waste, or be freed from impeachment of or exempted from punishment for committing waste, other than by pulling down old houses or buildings for the purpose of rebuilding or repairing the same with the consent of the landlord or landlords thereof; and so that in every such grant, demise, or lease, or limitation or appointment by way of grant, demise, or lease, there be contained a covenant by the tenant or lessee thereof, for payment of the rent thereby to be reserved (1), and a clause or power in the na-

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thereof, or otherwise, shall not be diminished or decreased; and which said fines or premiums shall at all times, and from time to time, when and as the same shall be received, be paid, applied, and disposed of to and for the ends, intents, and purposes hereinafter declared or expressed concerning the same."

(1) It is material to the interest of the lessor, that the tenant be made to enter into a covenant for payment of the rent reserved; *Taylor v. Horde*, 1 Burr. 60; *ante*, Vol. III. p. 71, n. (15).

Covenant to
pay rent.

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ture of a condition of re-entry (1), in case the rent or rents thereupon to be reserved, be behind or unpaid by the space of 21 days next after the same shall become due and payable, and all usual covenants for farming and managing the lands to be thereby demised, according to the custom of the county where the same may be (2), and so that the person or persons to whom such grant, demise, or lease, or limitation or appointment by way of grant, demise, or lease, shall be made, do, seal, and execute the leases, limitations, or appointments, to him, her, or them respectively granted or made, or counterparts thereof (3). PROVIDED ALWAYS, and it is hereby further declared and

Powers of sale
and exchange;
see *ante*, p. 248.

Re-entry.

(1) Without a clause of re-entry, the land might remain unoccupied without there being any distress for payment of the rent in arrear; *Taylor v. Horde*, 1 Burr. 60; and *vid.* *Jones v. Verney*, Willes, 169; *Hotley v. Scott*, Loft. 316; and see *ante*, Vol. III. p. 71, n. (15), p. 89, n. (46) (47).

Copyholds.

(2) If part of the premises be copyhold, add,

“So that if any part of the said hereditaments and premises be copyhold, a full and sufficient licence to be obtained from the lord or lords, or lady or ladies of the manor or manors whereof they are holden, for demising or leasing the same.”

Building leases.

(3) If it be wished that a power of granting building leases should be given, it may be introduced here, the form of which will be found *post*, rider (F).

Mining leases.

If the lands be situated in a mining county, and a power to grant mining leases be wished, the form of such a power will be found *post*, rider (G).

Partition.

If the settler be not entitled to the entirety of the settled

agreed by and between the parties to these presents, according to their respective estates and

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estates, add here a power for the trustees to make partition of them, for the form of which, see *post*, rider (H).

If part of the settled premises consist of commonable lands, there may here be inserted a power for the trustees to divide them, for the form of which, see *post*, rider (I). Enclose common fields.

If the premises, or part of them, consist of copyhold lands, a power may be given to the trustees to enfranchise them, for the form of which, see *post*, rider (K). Enfranchisement of copyholds.

If the husband and wife are to have a power to charge a sum of money upon the settled estates for their own benefit, such power may be inserted here; for the form of which, see *post*, rider (L). Power of charging; see *ante*, p. 348.

If it be agreed that the husband shall have a power of jointuring a future wife, add here, Power of jointuring future wife.

“ PROVIDED ALWAYS, and it is hereby further declared and agreed by and between the parties hereto, that if the said (*intended husband*) shall survive the said (*intended wife*), then and in such case it shall be lawful for him the said (*intended husband*) by any deed or deeds, or other writing or writings to be by him sealed and delivered in the presence of and attested by two or more credible witnesses after the decease of the said (*intended wife*), to grant, limit, or appoint, unto or to the use of every or any woman whom he may thereafter marry, (such grant, limitation, or appointment to be either prior or subsequent to the said marriage) for and during the life or lives of such woman or women respectively, for or in the nature of a jointure for her or them respectively, any rent or annual sum, not exceeding the clear yearly sum of £ , to be issuing out of, and charged and chargeable upon, all or any of the lands and hereditaments hereinbefore granted and released, or otherwise assured, or intended so to be, by even quarterly payments, on the four most usual feast

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interests, that notwithstanding any of the uses, trusts, or limitations hereinbefore declared, (subject only and without prejudice to any subsisting estates or interests for the time being, created in exercise of or pursuant to the power of leasing hereinbefore contained), it shall be lawful for the said (*trustees to preserve, &c.*) and the survivor of them (1), and the heirs, {or the executors, or administrators} of such survivor, and their or his assigns, or other the trustees or trustee for the time being, or by virtue of these presents for preserving contingent remainders, at any time or times, with the consent and approbation of the said (*intended husband*) and (*intended wife*) his intended wife, during their joint lives, or of the survivor of them, after the decease of either of them, during his or her life, such consent and approbation to be testified in writing under the hands and seals of the said (*intended husband*) and

days or days of payment of rent in each year; with such powers of distress and entry, and other powers and remedies, and with such term of years to be created or raised for the purpose of securing the due payment thereof, as he the said (*intended husband*) shall think proper."

Power of sale
necessary.

(1) As trustees have not a power of selling by virtue of their trust estate, it is requisite that it should be expressly given to them; see *Witter v. Witter*, 3 P. Wms. 101; *Winchelsea v. Norcliffe*, 1 Vern. 402. 435; *Kaye v. Powell*, 1 Ves. jun. 408; and such power must be given to the survivor, as it cannot otherwise be exercised by them; see *Townsend v. Wilson*, 1 Barn. and Ald. 608, 3 Mad. 261, S. C. and see *ante*, p. 352, n. (1).

(*intended wife*) or the hand and seal of the survivor of them, and to be attested by two or more credible witnesses; and in case of and from and after the decease of the survivor of them the said (*intended husband*) and (*intended wife*) his intended wife, if the person or persons who shall then next presumptively be entitled to the messuages, lands, tenements, and hereditaments, under or by virtue of the limitations hereinbefore contained, shall be above the age of sixteen years, then with the consent and approbation of the person or persons so presumptively entitled, to be testified in manner aforesaid; but if such person or persons shall be under that age, then of or by the sole and only proper authority of them the said (*trustees to preserve, &c.*) or the survivor of them, or the heirs, executors, or administrators of such survivor, or of their or his assigns, or other the trustee or trustees lastly aforesaid for the time being, either personally and by themselves or himself, or by their or his attorney or attornies lawfully authorised in that behalf, to sell and dispose of, and limit, appoint, and convey all or any of the same messuages, lands, tenements, and hereditaments, and the fee-simple and inheritance thereof to any person or persons whomsoever, whether such person or persons be tenant or tenants for life (1) of

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(1) As doubts have formerly arisen as to the validity of a purchase made of the trust estate by the tenant for life, see *Abell v. Heathcote*, 2 Ves. jun. 101, 4 Brow. Ch. Ca. 285, S. C. although it seems not to be impeachable upon general principles, see *Purchase by tenant for life.*

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the same premises or otherwise, either together or in parcels, and either by auction or other public sale, or by private contract or agreement, for such price or prices in money or other equivalent, as by them the said trustees or trustee shall seem or be deemed reasonable; and for him or them to limit, appoint, and convey in exchange (1), the said messuages, lands, tenements, and hereditaments, or any part thereof, for or in lieu of any other messuages, lands, tenements, or hereditaments, either of freehold or copyhold tenure, of equal value, either of themselves and alone, or with a sum or sums of money, in the judgment or opinion of the said trustees or trustee (2); and in like manner also to make sale and dispose of or convey in exchange, or to enfranchise, all or any of the lands and hereditaments so to be purchased or taken in exchange, under the proviso

Lloyd v. Jones, 9 Ves. jun. 37. 52, it is proper to prevent similar questions again arising, that the power should expressly enable the trustees to contract with him as well as others.

Power of
exchange.

(1) As it has been determined that a power to sell will not authorise an exchange or partition of the land, *M'Queen v. Farquhar*, 11 Ves. jun. 467. 473, the power should be expressly extended to those objects.

Sale at best
price to be had.

(2) The power of sale given to trustees is sometimes for the best price that can be gotten for the same; but as this might defeat the purchaser's title by a defective execution of the power, should the estate be considered as sold for less than it would have fetched, the better way is to give them the power of selling for such price as to them shall seem reasonable; and see *Mortlock v. Buller*, 10 Ves. jun. 309.

lastly hereinbefore contained (1). AND it is hereby further declared and agreed, that when any of the said messuages, lands, tenements, and hereditaments shall be sold for a valuable consideration in money, in pursuance of these presents, or any sum or sums shall be taken by way of equality of exchange, the sum and sums of money to arise thereby shall be paid to the said (*trustees to preserve, &c.*) or the survivors or survivor of them, or the executors or administrators of such survivor, or other the acting trustees or trustee for the time being, with full power and authority for such trustees or trustee or any of the only acting trustees or trustee for the time being, upon payment of the money arising by sale or other disposition of all or any part or parts of the said hereditaments, when the same shall be sold and disposed of for a valuable consideration in money, or partly in money and partly by way of exchange, to sign and give proper receipts (2) for the money

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Money to arise by sale to be paid to the trustees.

(1) If part of the premises be copyhold, add,

“ And also to enfranchise all or any of the copyhold or customary lands, tenements, and hereditaments, hereby covenanted or agreed to be surrendered, for or by payment of an adequate and reasonable price or consideration.”

Enfranchisement of copyholds.

(2) This declaration that the receipts of the trustees shall be a discharge to purchasers, &c. does not appear to be absolutely necessary; it being now the received opinion, that wherever there is a hand appointed to receive, such person is competent to give an acquittance for it; but as this has been much disputed; see *Fearne's Posth. Works*, 121, 126, *Sugd. Vend. and Pur. ch. xi. 6 Pow. Prec. 299, n. (a)*, it is better that all doubt should be obviated by an express declaration to that effect.

Receipts of trustees a discharge.

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Purchasers, &c.
not liable to see
to the applica-
tion of purchase-
money.

for which the same shall be sold, or the money which shall be received in exchange; and it is hereby expressly agreed and declared, that the receipt and receipts of them the said trustees or trustee, or only acting trustees or trustee for the time being (1), under or by virtue of these presents, shall be a sufficient discharge and sufficient discharges, at all times, and from time to time, to any purchaser or purchasers, or other person or persons, paying such purchase-money or other consideration, for so much thereof as shall be therein acknowledged or expressed to be received; and such purchaser or purchasers, or other person or persons, his, her, or their respective heirs, executors, administrators, or assigns, shall not afterwards be required or liable to see to the application of, or answerable for the loss, mis-application, or non-application of such purchase or consideration-money, or any part thereof, nor be obliged or required to see that the same, or any part thereof, be laid out or invested in the purchase of other messuages, lands tenements, or hereditaments, or

Acting trustees'
receipt a dis-
charge.

(1) It was holden, in the case of *Crewe v. Dicken*, 4 Ves. jun. 97, that under the clause declaring the receipt of the trustees to be a discharge, a purchaser may require all the trustees named in the settlement, to join, even though some of them may have relinquished the trusts and released the estate to their co-trustees, the power of receiving and giving receipts for money being a personal trust and confidence which cannot be delegated to another, hence it is proper to declare that the receipt of the only acting trustees or trustee for the time being shall be a discharge to purchasers.

in the purchase of bank annuities, or in or upon any other securities until such purchase shall be made in pursuance of the provisos, declarations, or agreements hereinafter contained concerning the same; and that the person or persons respectively who shall take any of the lands or hereditaments hereby granted and released, or otherwise assured, in the way or nature of an exchange for other lands or hereditaments, shall not be obliged to see that the lands or hereditaments by them or him given or conveyed in or in the way or nature of an exchange for such lands or hereditaments, be conveyed or settled to, for, or upon the uses, trusts, intents, or purposes, hereinafter directed concerning the same (1), or any of them; and when any of the said messuages, lands, tenements, or hereditaments shall be sold for a valuable consideration in money, and a proper receipt shall be

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(1) In the way the old settlements were usually worded, the power of the trustees to sell implied a precedent *condition*, that the purchase-money should be laid out in other lands, and in the meantime invested on sufficient securities, &c. see Bac. Law Tracts, 233, which subjected a purchaser under the power, to the necessity of seeing that these conditions were performed, as otherwise his estate would be defeasible for want of a due execution of the power, see *Doe v. Martin*, 4 Durnf. and E. 39; *Burgoyne v. Fox*, 1 Atk. 575; *Cox v. Chamberlain*, 4 Ves. jun. 631, which occasioned the declarations in the text to be inserted for their protection; but as the present and other modern settlements are prepared, these powers are merely by way of *direction* to the trustees, and therefore any non-observance will only be a breach of trust in them without affecting persons claiming under an exercise of the power.

Purchasers not to see the consideration-money re-invested.

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signed and given for the purchase-money as aforesaid, and also when any of them shall be disposed of, or conveyed in exchange for or in lieu of other messuages, lands, tenements, or hereditaments, and the fee-simple and inheritance of such last-mentioned messuages, lands, tenements, or hereditaments, shall be well vested in them the said (*trustees to preserve, &c.*) and their heirs, or the survivor of them, and the heirs of such survivor, or other the acting trustees or trustee under or by virtue of these presents, all and every the said messuages, lands, tenements, and hereditaments, which shall be so sold and conveyed, either simply or in exchange, shall be and remain from thenceforth for ever freed and absolutely discharged, of and from all and every the uses, trusts, estates, limitations, powers, provisos, and agreements, in or by these presents limited, expressed, or declared concerning the same; and then and from thenceforth these presents and the grant, release, and assurance aforesaid, shall be and enure respectively, as to the whole or such part of the same messuages, lands, tenements, and hereditaments, as shall be respectively so sold and conveyed as aforesaid, to the only use and behoof of the purchaser or purchasers respectively thereof, or other person or persons to whom the same shall be respectively sold and conveyed, and of his, her, or their respective heirs and assigns for ever, or otherwise, as he, she, or they shall require in that behalf, subject only to such lease or leases thereof as shall have been made pursuant to the power

hereinbefore contained in that behalf, and which shall be then subsisting, [and also to such mortgage or mortgages as shall have been made by the trustees or trustee for the time being, of the said term of 1000 years, and which shall be then subsisting]. AND for the purpose of effecting any such sales, exchanges, or dispositions, {and enfranchisements}, respectively, as aforesaid, it is hereby declared and agreed, that it shall be lawful for them the said (*trustees to preserve, &c.*) or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, or their or his assigns, or other the trustees or trustee for the time being, under or by virtue of these presents, for preserving contingent remainders, after any such sale, exchange, {enfranchisement}, or other disposition, shall be so made, by any deed or deeds, writing or writings, to be by them or him sealed and delivered in the presence of and attested by two or more credible witnesses, to revoke (1), annul, and make void all and singular

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Power of revocation for
effecting such
sale, &c.

(1) It is not absolutely necessary to reserve a power of revocation of the subsisting uses, in order to effectuate a sale of the premises under a power for that purpose, as the execution of the power will, of itself, be a revocation of the preceding limitations, and the appointment of new uses to carry such sale into effect, is implied; see *Oxon Univer. v. Leighton*, 2 Vern. 376; *vid.* also Op. 6 Pow. Prec. 297, n. (a). Such power of revocation may, however, be safely reserved, and sales be made without a previous execution of the power, it not being within the stat. 27 Eliz. c. 4; see *Doe v. Martin*, 4 Durnf. and E. 39.

Power of revocation on sale not within 27 Eliz. c. 4.

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or any of the uses, trusts, or estates hereby limited and created of and concerning the messuages, lands, tenements, and hereditaments, which shall respectively be proposed to be sold, exchanged, or otherwise disposed of, and by the same or any other (1) deed or deeds, writing or writings, to be executed and attested as aforesaid, to limit, declare, direct, or appoint any new or other use or uses, estate or estates, which shall be thought necessary or expedient for the completing such sales, exchanges, {enfranchisements}, and dispositions respectively, and for conveying or assuring the messuages, lands, tenements, or hereditaments which may be the subject thereof, to the use of the person or persons purchasing, or taking the same in exchange or otherwise, as aforesaid, and of his, their, or her heirs, or to or for such

Does not prevent vesting.

Nor does this power prevent the vesting of the portions of the younger children provided by the settlement, but only subjects them to be divested on the execution of the power; *Reresby v. Newland*, 2 P. Wms. 93, 6 Brow. Par. Ca. 75, S. C.

Power of revocation.

(1) It should seem, that a power of revocation reserved in an original settlement, implies a power of limiting new uses; see *Fowler v. North*, 3 Keb. 7, 1 Vent. 197, S. C. per. nom.; *Jones v. C. Manchester*, Anon. 1 Ch. Ca. 242; *Colson v. Gardner*, 2 *ib.* 46; and so from time to time, as the parties please, *Becket's case*, Lane 118; *Hele v. Bond*, Prec. Ch. 474; *Sug. Pow. Appx. n. (3)*. But as this has been doubted of late by very considerable authorities, see 2 *Fonb. Eq.* 163, and 2 *Ca. Op.* 97, *Pow. Powers*, 272, it is proper that it should be expressly given;—and indeed when the power of revocation is not reserved in the original deed, but in a deed executing such power, it seems absolutely requisite, as no new uses can be

other uses (1), and for such estate or interest as such person or persons respectively shall direct or appoint; or for otherwise carrying the said powers of selling and exchanging, {and enfranchising}, respectively, into execution, according to the true intent and meaning of these presents; [and it is hereby also declared and agreed, that upon any such exchange as aforesaid being made, it shall be lawful for the said (*trustees to preserve, &c.*) and the survivors and survivor of them, or the heirs, executors, or administrators of the survivor, or other the acting trustees or trustee for the time being, under or by virtue of these presents, to receive or take any sum or sums of money by way of equality of exchange, upon and for the trusts and purposes hereinafter declared]. PROVIDED ALWAYS nevertheless (2), and it is hereby

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Trustees may
receive money
for equality of
exchange.

Purchase-
money to be laid
out in other
lands, &c.

limited out of the old seisin after revocation, without a power given of limiting such new uses; see *Hele v. Bond*, Prec. Ch. 474; *Ward v. Lewthal*, 1 Sid. 343.

(1) The power of limiting new uses to purchasers and others (where inserted) should be as general as possible; for as powers must be strictly pursued in their execution, if any particular use be designated, as to the "purchaser, his heirs, and assigns," it might be questioned (and indeed has been in practice) whether any other than such particular use, (even to a trustee of the purchaser to prevent dower,) can be declared; and see *Snape v. Turton*, Cro. Car. 472, and Sug. Pow. 370.

Limitation of
new uses.

(2) Or the clause may, for brevity sake, be continued thus,
"AND the said trustees or trustee shall, with all convenient speed, pay and apply the money to arise by such sale or sales, or to be received for such equality of exchange

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further agreed, declared, and directed, that all and every the said monies which shall be received for or upon any such sale or sales, or for equality of exchange as aforesaid, (or the surplus thereof, after payment and satisfaction of all costs and expenses, attending the execution of the trusts relating thereto, and of all charges and incumbrances (if any) created upon the said hereditaments, by virtue of these presents) shall, with all convenient speed thereafter, be laid out and invested by them the said (*trustees to preserve, &c.*) or the survivors or survivor of them, his

or partition, in and towards satisfaction and discharge of the principal sums of money (if any) which shall then be a charge or charges upon, or affect the said hereditaments and premises under or by virtue of these presents, and after satisfaction thereof, lay out and invest the surplus of any such money, or in case there shall be no such incumbrances as aforesaid, then the whole thereof, in the purchase of other hereditaments and premises in fee-simple in possession (or subject only to leases at improved rents), to be situate in that part of Great Britain called England, or in the principality of Wales, of a clear and indefeasible estate of inheritance in fee-simple, or in the purchase of lands, of leasehold or copyhold tenure, convenient to be holden with the hereditaments and premises hereinbefore settled and remaining unsold, or with the hereditaments and premises to be purchased, or taken in exchange or partition as aforesaid, so as such leasehold lands shall be held for sixty years, at the least; and the same, together with such copyhold lands, shall not exceed, in the value, one-third part of the hereditaments and premises to be purchased, or taken in exchange or partition as aforesaid."

heirs, executors, or administrators, or other the acting trustees or trustee for the time being, under or by virtue of these presents (by and with the consent and approbation of the said (*intended husband*) and (*intended wife*) or the survivor of them, if living, but if not, then at and by the sole discretion and authority of the trustees or trustee for the time being in whom the said trust monies shall be then vested) in the purchase or purchases (to be made at any one or more time or times) of other lands, tenements, or hereditaments, situated within that part of the United Kingdom of Great Britain and Ireland called England, or in the principality of Wales (1), of a clear and indefeasible estate of inheritance in fee-simple in possession, and (if any should be intermixed therewith) in copyhold lands or tenements of inheritance, or lands or tenements holden on lease for years or lives, so that such parts thereof as shall be copyhold do not exceed one fourth part, and such parts thereof as shall be leasehold do not exceed one fifth part in value of the freehold hereditaments; AND it is hereby further agreed and declared, that as well the messuages, lands,

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Purchased lands
to be settled to
same uses.

(1) Powers of sale, &c. must be strictly pursued, and therefore no purchase can be made in other place than authorised by the power; hence, if it be intended that the trustees should have power to purchase lands in Ireland, Scotland, or elsewhere, the power must be so expressed; and see *Cox v. Bateman*, 2 Ves. sen. 19.

Powers of sale
to be strictly
pursued.

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tenements, and hereditaments, so to be purchased, as all and every the messuages, lands, tenements, and hereditaments, so to be taken in exchange, {or enfranchised}, shall forthwith be respectively settled, conveyed, and assured, so and in such form and manner as that the same may thenceforth be and remain to such and the same uses, upon such and the same trusts, and for such and the same intents and purposes, and charged and chargeable in the same manner, and by and with and under the same powers of leasing, sale, and exchange, {or enfranchisement}, provisos, limitations, declarations, and agreements, as are hereinbefore declared or expressed concerning the messuages, lands, tenements, and hereditaments which shall be so sold, conveyed in exchange, {or enfranchised,} respectively, as aforesaid, or as nearly thereto as the differences of tenure, the death of the parties, and other contingencies will permit: So nevertheless, that if any of the messuages, lands, tenements, or hereditaments so to be purchased or taken in exchange, shall be held by lease or leases for years, the same shall not vest absolutely in the child or children of any person hereby made tenant for life who shall not attain the age of twenty-one years, or who shall depart this life under that age leaving lawful issue living at the time of his or her decease. PROVIDED ALWAYS, that if any of the messuages, lands, tenements, or hereditaments so to be purchased or taken in exchange, shall be held by lease or leases,

for lives or years, and renewable at or upon any event or time, proper provisions shall be inserted in the settlement to be made thereof for renewing the same from time to time, as occasion shall require, and the fines, fees, and expenses of such renewal or renewals shall from time to time be defrayed by and out of the rents, issues, and profits, or by mortgage for any term not exceeding ninety-nine years, of the lands or hereditaments whereof the leases are so renewable. AND it is hereby declared and agreed, that until the money arising by any such sale or disposition as aforesaid, shall be laid out in a purchase or purchases, in pursuance of the powers hereinbefore contained, it shall be lawful for the said (*trustees to preserve, &c.*) and the survivors and survivor of them, and the heirs, executors, or administrators of such survivor, and their or his assigns, and other the acting trustees or trustee for the time being under or by virtue of these presents, by and with the consent and approbation of the said (*intended husband*) and (*intended wife*) or of the survivor of them, (to be testified as aforesaid) if living; but if not, then of or by the sole authority and discretion of them or him the said trustees or trustee, to place out such money at interest in the public funds, or on government or real securities (1) in that part of the United Kingdom of Great

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And until purchases the money to be invested on good securities.

(1) It is of course discretionary in the parties to authorize the trustees to invest the trust-moneys in any funds they may 3 per cent. annuities the proper fund.

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Britain and Ireland called England, and also from time to time, with such consent and approbation, and so testified as aforesaid, or of their or his own authority and discretion, as the case shall require, to alter (1), transpose, vary, and change such funds and securities when and so often as shall be thought fit or expedient; and the dividends, interest, and annual proceeds from time to time to arise from or in respect of the money which shall be invested in any such funds or securities, or from or in respect of any sum or sums of money which may be received by the said trustees or trustee,

think proper, or to leave it to the judgment of the trustees themselves; but for want of such authority or discretion given to them, it behoves them to lay it out in the three per cent. bank annuities (either reduced or consolidated) this being the fund adopted by the court; for if they invest it in any other funds, and a loss accrue, they must personally sustain it; see *Ansom v. Allen*, 2 Dick. 498; *Howe v. E. of Dartmouth*, 7 Ves. 137; *Holland v. Hughes*, 16 *ib.* 111. South Sea and Bank annuities have however been holden to be proper and good securities upon which trustees may invest the trust-money under powers of this kind, *Trafford v. Boehm*, 3 Atk. 513, but not South Sea or Bank stock, as these are sustained by the personal responsibility only of the company, and subject to the casualties and fluctuation of their trade.

Varying securities.

(1) Trustees cannot change the funds upon which trust-moneys are placed, unless authorized so to do, without being liable for a breach of trust; *Harrison v. Harrison*, 2 Atk. 121; see *Buckley v. Blakeney*, 1 Ves. jun. 297; *Powlet v. Herbert*, 4 *ib.* 497; *Long v. Stewart*, 5 *ib.* 800, n.; and see *ante*, p. 276, n. (1); hence the propriety of giving them this power, where it is conceived that an occasional change of the funds or securities may be advantageous to the parties interested in them.

by or through any alteration or transposition of the said funds or securities, shall go and belong, and be payable and paid to such person or persons, and be applicable and applied to, upon, and for such uses, trusts, intents, and purposes, and in such manner as the rents, issues, and profits of the lands and hereditaments hereby directed to be purchased therewith, would have gone and been payable or applicable, under or by virtue of the limitations hereinbefore contained, in case such purchase or purchases had been then actually made. AND it is hereby declared and agreed by and between all the parties to these presents, as far as they are respectively interested, that no person or persons having any of the aforesaid trustmonies in his or their hand or respective hands, or upon any securities given by him, her, or them, for the same, shall, after he, she, or they shall have paid the same to the said (*trustees to preserve, &c.*) or the survivor of them, or the executors or administrators of the survivor, or their or his assigns, or other the acting trustees or trustee for the time being, of or under these presents, be answerable or accountable for any mis-application or the non-application of the same monies, or any part thereof, by such trustees or trustee, or be in any respects obliged or required to see to the disposal or application thereof (1), or of any part

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money to trustees not to be
liable to its application.

(1) Every person taking a conveyance of an estate which, or the purchase-money of which, is bound by the trusts created by the previous deed or will, takes it in equity subject to those

Application of
purchase-money.

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thereof, or of the interests, dividends, or proceeds thereof, or of any part thereof; and that all and every receipt and receipts which shall be given by him or them for the said trust-monies, or any part thereof, or for the rents, issues, or proceeds of the said lands and hereditaments, or for any sum or sums which shall or may be received for or in respect of interest, dividends, or other proceeds of the said trust-monies, or any part thereof, shall be good, sufficient, and effectual discharges and acquittances for the same (1).

trusts, and is consequently liable to perform them; see *Adair v. Schaw*, 1 Sch. and Lef. 262; *Kennedy v. Daly*, *ib.* 379; *Daniel v. Davison*, 16 Ves. 249, unless he be exempted from such liability by an express declaration; this clause is therefore highly necessary for the security of a purchaser under the trusts; see *ante*, Vol. VI. p. 418, n. (23); and *ante*, p. 63, n. (2), p. 364, n. (1), 365, n. (1).

Covenant by the intended husband to settle future property to the uses of this settlement.

(1) Where the present settlement made by the husband upon his intended wife, is conceived to be an incompetent provision for her, or inadequate to the reasonable expectancies of the issue of the marriage; (see *ante*, p. 251, n. (1).) and if it has been agreed, that any future property which may be acquired by either of them shall be settled to the same uses, add,

“ AND it is hereby further declared and agreed, and the said (*intended husband*) for himself, his heirs, executors, and administrators, doth covenant, promise, and agree with and to the said (*trustees to preserve, &c.*) their heirs, executors, and administrators, and every of them, that in case and at any time or times hereafter during the said intended coverture, any real estates or other property shall come to or vest in the said (*intended husband*), either in his own right, or in right of his said intended wife, or in her the said (*intended wife*) by descent, devise, gift, or otherwise, of or to the amount or value of £ , or upwards,

AND, &c. (1). AND the said (*intended husband*) for himself, his heirs, executors, and administrators,

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then and in such case, the same, or so much thereof as shall be of the said amount or value of £ , shall be conveyed and assured by the said (*intended husband*) his heirs, executors, or administrators, and the said (*intended wife*) her heirs, executors, or administrators (as the case may require) unto and to the use of the said (*trustees to preserve, &c.*) or other the trustees or trustee for the time being, to whom it shall or may be proper to convey and assure the same, and their or his heirs, executors, or administrators respectively, according to the nature and quality of such estate or estates respectively, to the several uses, upon the several trusts, and to and for the several ends, intents, and purposes, and under and subject to the several powers, provisos, declarations, and agreements hereinbefore declared or expressed concerning the lands and hereditaments hereby granted and released, or otherwise settled or assured, or such of the said uses, trusts, and purposes as shall be then subsisting or capable of taking effect, or as nearly thereto as the nature and quality of such estate or estates respectively will permit."

Covenant by intended husband that he is seised in fee.

(1) If the settler took the estate to himself and a trustee to bar dower, add here a covenant by such trustee that he has not incumbered, as, Dower trustee.

"AND the said (*trustee*) for himself, his heirs, executors, and administrators, doth hereby covenant and declare to and with the said (*trustees to preserve*) their heirs and assigns, that he the said (*trustee*) hath not at any time heretofore made, done, or knowingly occasioned or suffered, nor been party or privy to any act, deed, matter, or thing whatsoever, whereby or by means whereof the messuages, &c. hereinbefore expressed or intended to be by him released, or otherwise assured, or the appurtenants thereto, or any estate or interest in the same, are, or is, or can, or

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doth hereby further covenant, declare, and agree with and to the said (*trustees to preserve, &c.*) their heirs and assigns, and with and to other the trustees and trustee for preserving the contingent remainders aforesaid for the time being, in the manner following, that is to say, that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned, suffered, or omitted by him the said (*intended husband*) or any of his ancestors (1), or any of his or their trustees or trustee to the contrary (2) (except as herein-

may be incumbered, charged, or prejudicially affected in any manner howsoever."

Insurance.

If there be a mansion-house on the estate, or any considerable part of the premises consist of houses or other buildings, insert a covenant by the husband to insure them; which see *post*, rider (F).

(1) If the intended husband took otherwise than by descent, instead of "any of his ancestors," say, "or the said A. B." (*the devisor or other last purchaser*); and see Vol. I. No. XV. p. 141, n. (39).

Trustee to bar dower.

(2) If the intended husband took the estate to himself and a trustee to bar dower, say,

"That the power or authority so given or reserved to him in or by the said hereinbefore in part recited indenture of release, is at the time of the sealing and delivery of these presents in full force and effect, and has not at any time heretofore been revoked, annulled, extinguished, suspended, or otherwise become void or voidable. And also that he the said (*husband*) and the said (*trustee*) now have in themselves, or one of them, hath in himself, full power and lawful and absolute right and title to limit and appoint, and

before is excepted), he the said (*intended husband*) at the time of the sealing and delivery of these presents, is lawfully, rightfully, and absolutely seised in his demesne as of fee in his own right and to his own use, both at law and in equity, of (1) all and singular the messuages, lands, tenements, and hereditaments hereinbefore granted and released, or otherwise assured, or mentioned or intended so to be, and of every part and parcel thereof, as of or for a good, clear, perfect, absolute, and indefeasible estate of inheritance in fee-simple in possession (2) and in severalty (3), with-

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to grant, bargain, sell, release, and confirm all and singular the hereditaments and premises hereinbefore limited and appointed, and granted and released, or otherwise assured, or intended so to be, and the possession, reversion, and inheritance thereof, unto the said (*trustees to preserve*) their heirs and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents."

(1) If the settlement be of a moiety or other portion only of the estate, say, Moiety, &c.

"Of and in the said undivided moiety or half part, (*or as the case may be*) of and in all and singular the messuages," &c. *as above*.

(2) If the settlement be of a remainder or reversion, instead of "in possession," say, Remainder, &c.

"In remainder or reversion expectant as aforesaid."

(3) If part of the estate be copyhold, add,

Copyholds.

"And also in like manner seised, or otherwise legally and equitably possessed of or entitled unto all and singular the copyhold or customary messuages, lands, tenements, hereditaments, and premises hereby covenanted to be sur-

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out there being any manner of trust, condition, power of revocation, or of limiting, directing, or declaring any new or other use or uses, or other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may alter, determine, revoke, abridge, qualify, charge, incumber, or prejudicially affect the same estate or hereditaments, or any part thereof respectively, or defeat, determine, abridge, or vary the uses, trusts, estates, or interests hereby expressed, or intended to be granted or limited thereof or therein respectively (1), [and moreover, that the

rendered, and every part and parcel thereof, with the appurtenances, as of a good, sure, perfect, and indefeasible estate of inheritance in possession, to him and his heirs, at the will of the lord according to the custom of the manor of _____, or other manor or manors, whereof the same respectively are holden.”

Trustee to bar
dower.

(1) If the intended husband took the estate to himself and a trustee to bar dower, add,

“ And that he the said (*intended husband*) hath not at any time heretofore, in any manner executed or otherwise exercised the power of appointment, direction, or limitation, so reserved or given to him as aforesaid, of or concerning the premises, or any part thereof, or any estate or interest therein.”

Tenant in tail

If the intended husband be tenant in tail of the lands agreed to be settled, say,

“ Until the said hereditaments and premises shall hereby, or by the recovery or recoveries hereinbefore agreed to be suffered thereof as aforesaid, or otherwise, be fully and absolutely vested,” &c. *as above*.

said messuages, lands, tenements, and hereditaments are together of the clear and full annual value of £ (1), free of all reprisals.] AND also, that for and notwithstanding any such act, deed, matter, or thing, as aforesaid, he the said (*intended husband*) (2) now hath in himself and in his own right, full power and lawful and absolute authority, to grant, bargain, sell, release, and assure, all and singular the same (3) mes-

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(Full Form.)And hath right
to convey.

(1) If the owner of an estate, settled by way of jointure, covenant that it is of a certain annual value, and it is deficient, the heir must make it good in specie; *Speake v. Speake*, 1 Vern. 217; *Carpenter v. Carpenter*, *ib.* 440; and so also must the issue in tail; *Lady Clifford v. Lord Burlington*, 2 *ib.* 379; and see *ante*, Vol. VI. p. 524, (†).

Provision of
certain annual
value.

And although the jointress's estate be not settled upon her without impeachment of waste (and she is prohibited from committing waste, by 11 Hen. VII. and see *Cook v. Wexford*, 1 Eq. Ca. Ab. 221, pl. 2,) yet the court of equity will not interfere to prevent her so far as may be necessary to make up any deficiency in the annual value of her jointure lands; *Carew v. Carew*, 1 Eq. Ca. Ab. 221, pl. 8; and see *ante*, p. 243.

(2) If the intended husband took the estate to himself and a trustee to prevent dower, say,

Trustee to bar
dower.

“They the said (*intended husband*) and (*trustee to prevent dower*) now have in themselves, or one of them hath in himself, full power,” &c. *as above*.

(3) If the settlement be of a moiety or other portion only of the estate, say,

Moiety, &c.

“All and singular the said undivided moiety or half part (*as the case may be*) of and in all,” &c.

If of a remainder or reversion, say,

Remainder, &c.

“All and singular the said remainder or reversion expectant as aforesaid, of and in all and every the said mes-

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That the premises shall remain to the uses aforesaid.

suages, lands, tenements, hereditaments, and premises (1), and the possession, reversion, and inheritance thereof, unto the said (*trustees to preserve, &c.*) and their heirs, to the uses, upon the trusts, and to and for the ends, intents, and purposes, and with, under, and subject to the powers, provisos, declarations, and agreements hereinbefore limited, declared, expressed, or intended, of or concerning the same respectively. AND further, that all and singular the said messuages, lands, tenements, and hereditaments, with their and every of their respective rights, members, and appurtenances, shall (2) from time to time, and at all times hereafter, remain, continue, and

suages, lands, tenements, hereditaments, and premises, unto the said (*trustees*)," &c. *as above*.

Copyholds.

(1) If part of the estate be copyhold, say,

"All and singular the freehold hereditaments and premises hereby granted and released, or otherwise assured, and to surrender the said copyhold or customary hereditaments and premises hereby covenanted to be surrendered, or so mentioned or intended to be, respectively as aforesaid, and every part thereof, and the inheritance of the same, to the use of the said (*trustees*)," &c. *as above*.

Tenant in tail.

(2) If the intended husband be tenant in tail of the premises agreed to be settled, say,

"Shall immediately upon the sealing and delivery of these presents, and at all times thenceforth after the said common recovery or common recoveries aforesaid, or other sufficient assurances shall be suffered, had, and perfected, remain, continue," &c. *as above*.

be to the uses, upon the trusts, and for the ends, intents, and purposes hereinbefore declared or expressed and hereby intended concerning the same, or such of them as shall from time to time be subsisting or capable of taking effect; [and shall also from time to time, and at all times, be overt and liable to the distress and distresses, entry and entries of her the said (*intended wife*) or her assigns, during the term of her natural life, and of the trustees or trustee for the time being of the said term of 1000 years for the recovery of the said annuity or yearly rent-charge of £ , and every or any arrear or arrears thereof,] and shall and lawfully may be peaceably and quietly holden and enjoyed, and the rents, issues, and profits thereof, from time to time received and applied accordingly, without any lawful hindrance, molestation, disturbance, or interruption whatsoever, of, from, or by him the said (*intended husband*) or his heirs, or any person or persons whomsoever, now or hereafter lawfully or rightfully claiming or possessing any estate, right, title, charge, or interest at law or in equity, in, to, out of, upon, or respecting the same, or any part thereof, through, under, or in trust for him, them, or any of them, or any of his ancestors, or by or through their or any of their acts, means, or default. AND that free and clear, and clearly and absolutely discharged and exonerated, or otherwise by and at the expense of the said (*intended husband*) his heirs, executors, or administrators, effectually protected, saved harmless, and indem-

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nified from and against all former and other gifts, grants, bargains, and sales, contracts, releases, leases, devises, wills, conveyances, and other assurances, and all and all manner of uses, trusts, entails, limitations, settlements, remainders or reversions in the crown or elsewhere, conditions, mortgages, judgments, decrees, statutes, recognizances, extents, executions, elegits, sequestrations, debts of record, debts due to the king, or any of his predecessors, legacies, portions, annuities, rents, estate, right, and title of or to dower, forfeitures, entries, cause and causes of forfeiture and of entry, and all and singular other estates, rights, titles, interests, charges, and incumbrances whatsoever, which at any time or times heretofore have been, or which at any time or times hereafter, shall or may be made, created, executed, committed, or knowingly occasioned or suffered by him the said (*intended husband*) or any of his ancestors (1), or any person or persons now or hereafter lawfully or rightfully claiming or possessing any estate, right, title, or interest, at law or in equity, from, through, under, or in trust for him, them, or any of them, or by, through, or with his, their, or any of their acts, means, consent, privity, or default, [save only and except such person or persons who may at any time be entitled under

(1) If the intended husband took the estate otherwise than by descent; see *ante*, p. 378, n. (1).

or by virtue of any of the limitations in these presents contained, and his and their acts and deeds]

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(1). AND further, that he the said (*intended husband*) and his heirs, and all and every person and persons now or at any time hereafter, lawfully, equitably, or rightfully claiming or possessing any estate, right, title, or interest, at law or in equity, in, to, out of, upon, or respecting the (2) messuages, lands, tenements, and hereditaments hereby granted and released (3), or intended so to be, or any part thereof, from, through, under, or in trust for him, them, or any or either of them, or any of the ancestors of the said (*intended husband*) (4), (other than any person or persons claiming, or entitled under or by virtue of leases, or agreements for leases now subsist-

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And for further assurance.

(1) If part of the estate be copyhold, add,

Copyholds.

“ And the customary fines, heriots, rents, and services respectively aforesaid, to become due or payable for or in respect of the said premises, or any of them.”

(2) If the settlement be of a moiety or other portion only of the estate, say,

Moiety, &c.

“ The said undivided moiety or half part (*or as the case may be*) of and in the said hereditaments and premises.”

If of a remainder or reversion, say,

Remainder, &c.

“ The remainder or reversion expectant as aforesaid, of and in the said hereditaments and premises.”

(3) If part of the premises be copyhold, add,

Copyholds.

“ And covenanted to be surrendered respectively.”

(4) If the intended husband took otherwise than by descent, see *ante*, p. 378, n. (1).

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ing, or hereafter to be made or granted in pursuance of the powers herein contained, so far as respects their several estates and interests under or by virtue of the same), shall and will from time to time, and at all times after the solemnization of the said intended marriage, at the request of the said (*trustees to preserve, &c.*) or of the survivor of them, or of the heirs, executors, or administrators of the survivor, or their or his assigns, or of other the person or persons who for the time being shall be entitled to the said hereditaments, or the rents, issues, or profits thereof, or any part thereof, under or by virtue of these presents (but at the costs and charges of him the said (*intended husband*) his executors or administrators,) make, do, acknowledge, levy, suffer, execute, and perfect, or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected, with all due expedition all and every such further and other lawful and reasonable act and acts, deed or deeds, conveyances, and assurances whatsoever (with usual and other proper covenants) and other matters and things whatsoever, be the same by fine or fines, with or without proclamations, common recovery or common recoveries, deed or deeds enrolled or not enrolled, feoffment, release, confirmation, declaration, or limitation of or to any use or uses, or other assurance or assurances, of record or not of record for the further, better, more perfectly, fully and absolutely, or satisfactorily granting, releasing, conveying, confirming, and assuring the same hereditaments and premises,

and every or any part or parcel thereof, and the possession, reversion, and inheritance of the same, with their and every of their rights, members, and appurtenances, unto the said (*trustees to preserve, &c.*) (or other the trustees or trustee for the time being for the preservation of contingent remainders), for the uses, upon the trusts, and to and for the intents and purposes, and with, under, and subject to the powers, provisos, declarations, and agreements hereinbefore declared or expressed concerning the same respectively (or such of them as shall be then subsisting or capable of taking effect), or as nearly thereto as the deaths of parties, the change of interests, and other intervening circumstances, will admit, and in such manner as they the said trustees, or the person or persons who for the time being shall be so entitled as aforesaid, or his, their, or any of their counsel in the law, being of the degree of a barrister, shall reasonably advise and require. [AND (1) also, that in case the said hereditaments, or any part thereof, shall be sold, mortgaged, exchanged, or otherwise disposed of, in pursuance of the trusts hereinbefore declared for that purpose, he the said (*intended husband*) or

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That in case of
sale, the in-
tended husband
will join.

(1) The concurrence of the husband is not essential; see *ante*, Vol. VI. p. 39, n. 35; the parts within this and the next brackets might therefore be omitted—they are however usually introduced in a full form.

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But his concur-
rence not to be
essential.

Declaration that
outstanding
terms shall
attend, &c.

his heirs, shall and will, at the cost and expense of the person or persons requiring the same, join and concur in such sale, mortgage, exchange, or other disposition, and do and execute all such conveyances and assurances, and other acts, matters, and things as shall be reasonably advised and required for carrying the same into effect, so that no such conveyance or assurance contain or imply any further or other warranty, or more general covenants, on the part of the person or persons who shall be required to make or execute the same, than for or against the acts, deeds, omissions, or defaults of him, her, or them, and of his, her, or their heirs, executors, or administrators, and so that he, she, or they be not obliged to go from his, her, or their then place or respective places of abode for that purpose. PROVIDED ALWAYS nevertheless, and it is hereby agreed and declared, that the joining or concurrence of him the said (*intended husband*) or his heirs, in any such sale, mortgage, exchange, or other disposition, shall not be deemed in any wise essential or necessary to perfect the title of the purchaser or purchasers of the said premises, or other person or persons taking a conveyance thereof, or of any estate or interest therein, or any part thereof, but for the greater satisfaction only of him, her, or them, if required.]

[AND lastly, it is hereby agreed and declared by and between the parties hereto, that all and every person or persons who now are, or is, or hereafter shall or may be, seised or possessed of any estate

or estates, term or terms of years, or other outstanding interest in the lands or hereditaments hereby granted and released, or otherwise assured respectively, or intended so to be, or any part thereof, and his, her, and their heirs, executors, and administrators, shall at all times hereafter during the residue of such estates, terms, and interests, respectively, be seised, possessed of, and interested in the same IN TRUST to attend the uses and limitations hereby created or declared, of or concerning the lands and hereditaments therein comprised, for the purpose of protecting the same from and against all mesne and subsequent incumbrances, if any such there be (1).] PROVIDED ALWAYS (2), and it is hereby further de-

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Power of appointing new trustees.

(1) This declaration not essential ; *sée ante*, p. 350, n. (1).

(2) It is very material that a settlement should contain a power of appointing new trustees, in case of death, &c. as they cannot do so of their own authority ; *Buchannon v. Hamilton*, 5 Ves. jun. 722 ; nor will the court in general supply the defect ; *Bayley v. Mansell*, 4 Madd. 226 ; and where there is such a power, care should be taken to provide against there being but one remaining, as should the surviving trustee die leaving an infant heir, the trust cannot be filled up without a bill in equity ; see *ex parte Anderson*, 5 Ves. jun. 254.

Power of appointing new trustees necessary.

This power of appointment of new trustees on death, &c. should be given to the surviving or continuing trustees with the consent of the person (if any) who for the time being shall be entitled to the property for life ; and if there be no such person living, then with the consent of such persons who, for the time being, may be interested in the property, and are of age, and if not, shall be then of age, the consent of their guardians, if any, and in default of all these, then, and then only, at the sole discretion of the trustees ; sometimes the person entitled to ap-

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clared and agreed by and between the parties hereto, that in case the trustees in or by these presents named and appointed, or any of them, or any succeeding or other trustees or trustee for the time being of the said trust estate and premises, to be nominated or appointed as hereinafter is mentioned, shall depart this life, or be desirous to be discharged from the aforesaid trusts, or shall be about to reside beyond the seas, or shall refuse or neglect or become incapable to act in the said trusts, before the same shall be fully executed and performed, or determined, then and in such case, and from time to time, as often and as soon as any such event shall happen, it shall be lawful for the said (*intended husband*) and (*intended wife*) (1) during their joint

point has the power; but as it has happened that he has appointed friends of his own who have lent him the money, which has occasioned it to be lost to those entitled in remainder, &c.

Separate trustees appointed by husband and wife.

(1) If separate trustees are appointed on the part of the husband and wife respectively, say,

“For the said (*intended husband*), in case of such decease, refusal, or declining to act, of either of them the said (*husband's trustees*); and for the said (*intended wife*), in case of the decease, refusal, or declining to act, of either of them the said (*wife's trustees*) by any writing under his or her hand and seal, to be attested by two or more credible witnesses, to nominate, substitute, and appoint some other fit person or persons to supply the place of the trustees or trustee respectively, so dying, desiring to be discharged, or about to reside beyond the seas, or refusing or neglecting, or becoming incapable to act as aforesaid, to the end and

lives, or the survivor of them after the decease of either of them, or other the person or persons who shall or may for the time being, be entitled under or by virtue of the limitations or uses hereinbefore contained, to the immediate freehold of the lands and hereditaments hereby granted and released, or otherwise assured, or intended so to be, or other lands or hereditaments which shall or may be substituted in lieu thereof by virtue of the powers hereinbefore contained in that behalf, if such person or persons shall be of the age of sixteen years, but if not, or in case of the refusal or neglect for one calendar month of any such last-mentioned person or persons, after he, she, or they shall be thereunto requested by any or either of the acting trustees or only acting trustee for the time being, or by the guardian or guardians of any child or children of the said marriage, then for them the said trustees, or the only acting trustees or trustee for the time being, or the heirs, executors, or administrators of the last acting trustee, by any deed or writing under their, his, or her hands and seals, or hand and seal, to be attested by two or more credible witnesses (and he and they are in every such case hereby expressly required) to nominate, substitute, and appoint, some other fit person or persons to supply

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intent that each of them the said (*intended husband*) and (*intended wife*) may at all times have one or more trustees or trustee of his or their own appointment or nomination."

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the place of the trustees or trustee so dying, desiring to be discharged, or being about to reside beyond the seas, or refusing or neglecting or becoming incapable to act as aforesaid; and that immediately after any such appointment shall be made, all and every the lands and hereditaments, stocks, funds, monies, and securities, which, under or by virtue of these presents, shall be then vested in the trustees or trustee so dying, desiring to be discharged, being about to reside beyond the seas, or refusing or neglecting, or becoming incapable to act as aforesaid, shall be conveyed, transferred, assigned, and assured, so and in such manner that the same respectively, shall be legally and absolutely vested in the trustees or trustee so to be appointed in their or his room or stead, either solely and alone, or jointly with the surviving, continuing, or only acting trustees or trustee, as the case may require, and in his, her, or their heirs, executors, administrators, or assigns, according to the nature of the said trust estate, to the uses, upon the trusts, and to and for the several intents and purposes hereinbefore declared or expressed concerning the same, or such of them as shall be then subsisting or capable of taking effect; or such other uses or trusts as may be required to carry these presents into effect, according to the true intent and meaning thereof (1). [AND also that

New trustees to
have the same
powers as their
predecessors.

(1) There is no objection to trustees having given to them a power of appointing new trustees with more extensive powers

all and every such new trustees or trustee shall and may act and assist in the management, carrying on, and executing of the trusts to which he or they shall be so appointed (although he or they shall not have been invested with the seisin of the trustee or trustees, to whose place or places he or they shall have succeeded), either jointly with the surviving, continuing, or other acting trustees or trustee, or solely, as the case may require, in such and the like manner, and with such and the same, or the like powers, privileges, and authorities of approbation, consent, discretion, and of mortgaging, leasing, exchanging, {enfranchising}, investment of money, changing and varying securities, giving receipts, and of maintenance, education, and advancement, and other powers, privileges, and authorities whatsoever, as if such new trustees or trustee had been originally appointed by these presents, and his or their name or respective names had been inserted in these presents, instead of the name or names of the trustees or trustee hereby appointed, in or to whose place such new trustees or trustee respectively shall be appointed or succeed; AND for that purpose it shall be lawful for the person or persons by whom any such new or other trustees or trustee shall be so named or appointed as aforesaid, by any deed or deeds, or other instrument or instruments, in

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cation for giving
seisin of trust
estates to new
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than those which are given to themselves; see *Webb v. E. Shaftsbury*, 7 Ves. 487; and circumstances are often found to occur which render this provision very convenient and advantageous to the trust estate.

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writing, to be sealed and delivered by him or them in the presence of, and attested by, two or more credible witnesses, to revoke and make void all or any of the uses, estates, or trusts hereinbefore created, limited, or declared of or concerning the lands and hereditaments hereinbefore granted and released, or otherwise assured, or which shall hereafter be substituted in the room or stead thereof by virtue of any of the powers hereinbefore contained, or any of them, or any part thereof, or such and so many of the same estates, uses, and trusts as shall be deemed necessary or expedient; and by the same or any other deed or deeds, or instrument or instruments in writing, to be sealed, delivered, and attested as last aforesaid, to create, limit, or declare any such new or other use or uses, estate or estates, trust or trusts, of or concerning the said lands and hereditaments, or any part thereof as shall be deemed necessary or expedient to or for the end and purpose of vesting the same lands and hereditaments in such newly appointed trustees or trustee, jointly with the old or continuing trustees or trustee, or in such new trustees solely, as the case may require, to, for, and upon the same or like uses, estates, and trusts, and with and under the same or like powers, authorities, and discretions, as if he or they respectively had been appointed by these presents (1).] PROVIDED

Trustees not to be chargeable for each other's acts.

Power of revocation.

(1) As the trustees to preserve contingent remainders take a vested interest in the lands, &c. limited to them, *Dormer v. Fortescue*, Willes, 327; *Smith dem. Dormer v. Packhurst*, 3 Atk.

LASTLY, and it is hereby further declared and agreed by and between the said parties hereto, that the several trustees in and by these presents nominated and appointed, or the trustees or trustee who shall hereafter be nominated or appointed, by virtue of the power and directions hereinbefore contained, or any or either of them, their, or any or either of their heirs, executors, administrators, or assigns, shall not be charged or chargeable for or with any more or other monies, securities, or property, than he or they respectively shall actually receive, or which shall come to his or their hand or respective hands, under or by virtue of the trusts hereby in him or them reposed, notwithstanding he or they shall or may give or sign, or join in giving or signing any receipt or receipts, or other acquittances, or in the doing any other act or acts for the sake of conformity only, or solely for the satisfaction of the person or persons

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135 ; *Berrington v. Parkhurst*, 13 East. 489, it seems clear that such lands, &c. may be conveyed by them to any newly appointed trustees, who would be enabled to act in the execution of the trusts as effectually as if they had been originally appointed ; but it being now generally considered requisite, in practice, that the new trustees should have the same seisin as was vested in the old trustees, this power of revocation of the old uses is introduced in modern settlements for the purpose of enabling the old trustees to vest the premises in some third person, in order that it may be conveyed by him to the old and new trustees as for a joint estate. The form of a deed for this purpose will be found under the head of " MISCELLANIES," see INDEX, *voce* TRUSTERS. For the form of a general power of revocation, see *post*, rider (N).

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requiring the same (1); and that no one or more of them the said trustees shall be answerable or accountable for the other or others of them, nor for the acts, receipts, neglects, or defaults of the other or others of them (any consent, permission, or privity, by any or either of them, to the payment of money, or performance of any act to or by the other or others of them, with an intent and for the purpose only of facilitating the execution of the trusts of these presents notwithstanding (2),) nor shall any trustees or trustee who shall be appointed under or by virtue of the proviso lastly hereinbefore contained, or the heirs, executors, administrators, or assigns, of any such trustees or trustee, be answerable or accountable for the acts, deeds, receipts, neglects, defaults, or

(1) As to the propriety of inserting this declaration; see *ante*, Vol. VI. p. 482, n. (1).

Trustees answerable for each other.

(2) As trustees cannot act in the execution of the trusts, without the concurrence of each other, in which they differ from executors, they would naturally, at law, without this protecting clause, be answerable for each other's acts, although not in equity; *Murrel v. Cox*, 2 Vern. 570; *Fellows v. Mitchell*, 1 P. Wms. 81; *Leigh v. Barry*, 3 Atk. 584; *Sadler v. Hobs*, 2 Br. Ch. Ca. 114; see *Scurfield v. Howes*, 3 Brow. Ch. Ca. 90; *Keble v. Thompson*, *ib.* 112; *Bartlett v. Hodgson*, 1 Durnf. and E. 42; *Brice v. Stokes*, 11 Ves. jun. 324; *Shipbrook v. Hinchinbrook*, 16 *ib.* 479; but as mere negligence or too much confidence placed by one of the trustees in the other, may subject him to a responsibility for his acts, without any actual privity or concurrence; *Chambers v. Minchin*, 7 Ves. jun. 186; *Hovey v. Blackman*, 4 *ib.* 596. 609; and see *ante*, Vol. VI. p. 482, n. (2), and *post*, p. 397, n. (1).

omissions of any trustees or trustee, in or to whose place or places they or he shall or may succeed, but each of them the said trustees shall be answerable, accountable, and responsible for his own acts, receipts, neglects, and defaults only; Nor shall they, or any or either of them the said trustees, be answerable or accountable for any person or persons who is, are, or shall be, receiver or receivers of the rents or profits of the said hereditaments, or of any part thereof, or for any banker, goldsmith, broker, or other person with whom or in whose hands the said trust-monies, securities, or property, or any part thereof, shall or may be deposited, lodged, or entrusted for safe custody, or otherwise in the execution of the trusts aforesaid (1); nor for the insufficiency or deficiency of title, in or to any messuages, lands, tenements, or hereditaments which may be had or received by way of exchange, for or in lieu of all or any part

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Nor for involuntary losses.

(1) The trustees would not, even without this clause, be answerable for any loss which may happen to the trust-property, unless it be occasioned through some negligence or want of care; *Morley v. Morley*, 2 Ch. Ca. 132; *Adams v. Claxton*, 6 Ves. jun. 229; but if they be wanting in any due precaution for the security of the property, they will be answerable, although they had no wilful design of committing it to hazard; *Caffey v. Darby*, 6 Ves. jun. 488; *French v. Hobson*, 9 *ib.* 103; *Adair v. Shaw*, 1 Sch. and Lef. 272; and see *Wren v. Kirton*, 11 Ves. jun. 377; *Shipbrook v. Hinchinbrook*, 16 *ib.* 477; and see *ante*, Vol. VI. p. 482, n. (2).

Responsibility
of trustees.

If a trustee place money in a banker's hands, not on the trust account, but generally with his other monies, he will be answerable if the banker fail; *Fletcher v. Walker*, 3 Madd. 74.

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of the hereditaments and premises hereby made saleable and exchangeable, or which may be purchased with the money to arise from or by any sale thereof, or other the trust-monies aforesaid; nor for the insufficiency or deficiency of any funds or securities in or upon which the said trust-monies, or any part thereof, shall be placed out or invested, or which shall happen by any rise or fall in the price of stocks, exchequer bills, or other the said funds or securities, or in or by varying, transferring, or transposing of the same funds or securities, or any of them; nor for any other misfortune, loss, or damage which shall or may happen to the said trust estates, monies, and premises, or any of them, or any part thereof, in the execution of the aforesaid trusts, or in relation thereto, so that the same be done by and with such consent and approbation as is hereby required to be had or obtained for doing the same, and except any such loss or misfortune shall happen by or through his or their own wilful and respective default or neglect, and then and in that case, each of them respectively shall, singly and alone, be answerable for such loss or damage, or for so much thereof as shall arise from such his or their own proper act or default, and not further or otherwise. AND also, that it shall be lawful for the said trustees in these presents named, and every such other or future trustees or trustee to be appointed as aforesaid, their and every of their heirs, executors, and administrators, by and out of the said hereditaments, property, and settled

Trustees to
retain their
expenses.

estates and premises, and the rents and profits, and dividends, interest, and proceeds thereof respectively, to deduct and retain to and for himself and themselves respectively, and also to allow and pay to his and their co-trustees and co-trustee, or any or either of them, all and every the costs, charges, and reasonable disbursements and expenses, which they, or any or either of them, shall or may, from time to time, or at any time or times, pay, sustain, expend, or be put unto, in, for, or in respect of all or any rents, quit-rents, taxes, fines, heriots, repairs, and outgoings, of, for, or concerning the said hereditaments and premises, salaries, wages, and allowances to bailiffs, stewards, and others, fees to counsel for advice (1), or otherwise howsoever, in or about the execution of the aforesaid trusts, or any of them, or in any wise relating thereto (2); and also to settle, adjust, pay, and allow the accounts and disbursements of any

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(1) Although a trustee will be allowed what he may have paid to his counsel or solicitor for advice in the management of his trust; *Macnamara v. Jones*, 2 Dick. 517; and see 1 Ball and Beat. 190; yet as the necessity of taking such advice, in any particular, may be questionable, it is better to give him an express authority to do so.

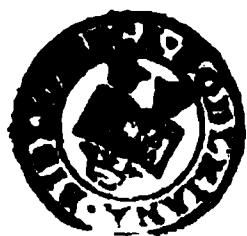
(2) Trustees have a right to retain and reimburse themselves all just payments and reasonable expenses, without being limited to the strictness of costs on taxation; *Amand v. Bradbourne*, 2 Ch. Ca. 138; *Webb v. E. Shaftesbury*, 7 Ves. jun. 480; *Fearns v. Young*, 10 *ib.* 181; but it is more satisfactory to trustees, who are usually wholly unacquainted with the rules or practices of the court, to have their expenses expressly provided for; and see *ante*, Vol. VI. p. 444, n. (2).

Trustees' ex-
penses.

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trustee or trustees who shall depart this life, or be desirous of being discharged of and from the aforesaid trusts, or who shall be about to reside beyond the seas, or shall neglect or refuse, or become incapable to act in the said trusts, and in whose place or stead a new trustee or trustees shall have been appointed; and also to receive and give discharges for any money which shall appear to be then due from such trustees or trustee, without he or they, or other person or persons paying the same, being liable to see to the application thereof, or being answerable or accountable for the loss, mis-application, or non-application thereof; and it is hereby declared and agreed, that the allowance of which said accounts, disbursements, costs, and expenses, shall be reckoned and settled fully and liberally, as between solicitor and client, and not as between party and party, in any cause, suit, or legal proceeding. IN WITNESS, &c.

. For practical remarks relative to marriage settlement see (in addition to the preceding notes) *ante*, INTRODUCTION, after p. 240.



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(A) *Recital of preliminary Articles of Settlement.* See ante, p. 283, n. (2).

“ WHEREAS by articles of agreement, bearing date on or about the day of , which was in the year , and made or expressed to be made between the said (*husband*) of the first part, the said (*wife*) his wife by her then name and addition of, &c. a minor, of the age of years, or thereabouts, (*or as the case was*) of the second part; (*father of intended wife*) of, &c. of the third part; and (*trustees*) of the fourth part, executed previously to and in contemplation of the marriage then intended to be shortly solemnized between the said (*husband*) and the said (*wife*) his wife; the said (*intended husband*) (*or as the case was*) covenanted and agreed with the said (*trustees*), that upon the solemnization of the said marriage, and the said (*wife*) attaining her age of twenty-one years, he the said (*husband*) would settle and assure all and singular the messuages, lands, tenements, and hereditaments, therein and hereinafter described, To the uses, upon the trusts, and for the intents and purposes, and under and subject to the powers, provisos, declarations, and agreements thereafter limited, declared, or expressed, concerning the same; that is to say, To THE USE of two or more trustees to be named by the said (*wife*) (*or as the case was*) their executors, administrators, and assigns, for a term of ninety-nine years, to commence and be computed from the day of the solemnization of the said intended marriage, UPON TRUST to raise and pay, during the joint lives of the said (*husband*) and (*wife*), an annuity or clear yearly sum of £ to such person or persons as she the said (*wife*) should, notwithstanding her coverture, direct or appoint in the manner therein and hereinafter mentioned, and in default of such direction or appointment, into her own hands, by way of pin-money; and subject to the said term, and to the trusts thereof, To THE USE of the said (*husband*) and his assigns,

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during the term of his natural life, without impeachment of waste; and after the determination of that estate in his lifetime, To THE USE of two or more trustees to be named by the said (*husband*), and their heirs during his life, IN TRUST to preserve contingent remainders; and after the decease of the said (*husband*), To THE USE and intent to secure to the said (*wife*) and her assigns, a yearly rent-charge of £ , during her life, to be paid in such manner, and with such powers and remedies for recovering the same as hereinafter is expressed; and subject to the last-mentioned annual sum, and to the powers and remedies for recovering the same, To THE USE of two or more trustees to be nominated by the said (*wife*), their executors, administrators, and assigns, for a term of ninety-nine years, to be computed from the decease of the said (*husband*) without impeachment of waste; UPON TRUST for better securing the said last-mentioned annuity, in the manner aforesaid; and subject as aforesaid, To THE USE of two or more trustees, their executors, administrators, and assigns, for a term of 1000 years, to commence from the day of the decease of the said (*husband*), without impeachment of waste, for the purpose of raising the after-mentioned portions for the daughters and younger sons of the said marriage; and subject to the said term of 1000 years, and to the trusts thereof, To THE USE of the first and other sons of the said (*wife*) by the said (*husband*) to be begotten, successively in tail male; with remainder To THE USE of the said (*wife*) and her assigns, during the term of her natural life, without impeachment of waste; with remainder, in case of the determination of that estate during her life, To THE USE of trustees and their heirs, to support contingent remainders; and upon the decease of the said (*wife*), To THE USE of any husband whom she might happen to marry after the decease of the said (*present husband*), and who might survive her, for the term of his natural life; and after the determination of that estate in his lifetime, To THE USE of trustees and their heirs, during the life of such after-taken husband, UPON TRUST to preserve contingent remainders; with remainder To THE USE of all and every or such one or more of the children of the said (*wife*)

to be begotten by any future husband, for such estates or interests, and in such shares and proportions, and manner and form as the said (*wife*) should appoint in the manner thereafter mentioned; and in default or failure of such appointment, To THE USE of two or more trustees, their executors, administrators, and assigns, for a term of 1500 years, to be computed from the decease of the said (*wife*), UPON TRUST, in case of such failure of issue male of the said (*wife*) by the said (*present husband*) as aforesaid, to raise the therein after-mentioned portions for the daughters and younger sons of the said (*wife*), by any after-taken husband; and subject to the said term of 1500 years, and the TRUSTS thereof, To THE USE of the first and other sons of the said (*wife*) to be begotten by any such future husband, successively in tail male; with remainder To THE USE of the daughters or only daughter of the same husband by her the said (*wife*), as tenants in common in tail general, if more than one; and if but one, then to such one daughter for a like estate; with the ultimate remainder To THE USE of the said (*wife*) her heirs and assigns for ever. AND by the said indenture now in recital, it was further agreed by the said (*father*) on behalf of the said (*wife*), and by the said (*husband*) and the said (*wife*) as far as she was competent in that behalf, that in case the said intended marriage should take effect, all and singular the copyhold and customary messuages, cottages, lands, tenements, and hereditaments of her the said (*wife*) in the county of _____, should be respectively surrendered, settled, and assured, so and in such manner as that the same might go and remain, and that the rents and profits thereof be received and taken by the same person and persons, and be applicable to the same uses, intents, and purposes, as were thereinbefore expressed concerning the freehold estates of the said (*wife*) thereinbefore agreed to be settled, and the rents and profits thereof, and that the same should be liable to the same charges and payments, and powers and agreements, as the said freehold premises, or as nearly thereto as the nature of the tenure and the rules of law and equity

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would permit. AND it was further agreed, that all and singular the leasehold premises hereinbefore mentioned, should be assigned to two or more trustees, for the remainder of such term or terms of years, or other interests, as she the said (*wife*), or the said (*husband*) in her right, had or might become entitled to therein, upon such trusts as that the same leasehold premises might remain or go along with the freehold estates of the said (*wife*) thereby agreed to be settled, and might be therewith held and enjoyed, and that the rents and profits thereof be received and taken by the same person or persons, and be applicable to the same purposes, and be subject to the same charges and payments, and powers, provisos, and agreements, as the aforesaid freehold premises, or as nearly thereto as the rules of law and equity would permit, but so as no person who should be entitled to an estate tail in such freehold hereditaments, should be entitled to an absolute interest in such leasehold premises, until he or she should attain the age of twenty-one years, or die leaving issue, which should first happen. AND by the said indenture it is further declared, that in the settlement so to be made as aforesaid, there should be contained usual powers for leasing the premises therein comprised for twenty-one years, at the most improved rent, and without fine; and also for exchanging the same premises, or any of them, for other estates; and for enfranchising the copyhold parts thereof; and for selling the same freehold, copyhold, and leasehold premises, and for investing the money in the purchase of other estates in the manner after-mentioned; and also powers for appointing new trustees, and for the indemnification and reimbursement of the expenses of trustees; and all such other powers, provisos, declarations, and agreements, as are usually inserted in settlements of the like nature, and which counsel should advise in that behalf, as in or by the said in part recited articles, reference being thereunto had will more fully appear. AND WHEREAS soon after the date (but before the execution) of the said articles, the said marriage was duly had and solemnized. AND WHEREAS the said

(*wife*), on or about the day of last past, attained her age of twenty-one years; and the said parties hereto (as far as they are respectively interested) are now desirous of settling the said messuages, lands, tenements, and hereditaments, to such uses and upon such trusts, and for such ends, intents, and purposes, as in the said articles and hereinafter are declared or expressed concerning the same respectively. Now THIS INDENTURE WITNESSETH, that in pursuance and execution of the hereinbefore in part recited articles, and in consideration of the said marriage," &c. (*as in the text*), *ante*, p. 236.

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and his assigns, during the term of his natural life; with remainder to the use of the said (trustee) his executors and administrators, during the life of the said (husband) but in trust for him the said (husband) and his assigns; with remainder to and for the absolute use and behoof of the said (husband) his heirs and assigns for ever."

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(C) *Operative part of a Settlement where the Settler took the Estate with Limitations to bar Lower.* See ante, p. 291, note.

“HE the said (*husband*) pursuant to, and in exercise of the power and authority given or reserved to him, in or by the hereinbefore in part recited indenture of release, and by virtue thereof, and of all and every or any other power or powers, authority or authorities in anywise, enabling him in this behalf, and at the request and by the nomination of the said (*trustees to preserve, &c.*) testified by their being parties to, and signing and sealing these presents, HATH directed, limited, and appointed, and by this present deed or instrument in writing, by him sealed and delivered in the presence of the two credible persons whose names are, or are intended to be, hereupon indorsed, as witnesses thereto, BOTH absolutely and irrevocably direct, limit, and appoint, that all and singular the messuages, lands, tenements, and hereditaments, hereinafter particularly described or mentioned, and intended to be hereinafter granted and released or otherwise assured, shall remain, continue, and be, and that the said hereinbefore in part recited indentures of lease and release, shall be and enure unto the said (*trustees*) and their heirs, upon such trusts, and to and for such ends, intents, and purposes, as are hereinafter declared or expressed concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and for the further, better, more perfectly, or satisfactorily conveying and assuring the said messuages, lands, tenements, and hereditaments, unto the said (*trustees*) upon the trusts, and to and for the ends, intents, and purposes hereinafter mentioned, [and also for and in consideration of the sum of ten shillings of lawful and current money of England in hand, well and truly paid by the said (*trustees*) to the said (*husband*) and (*trustee*) respectively, at the time

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of the sealing and delivery hereof, the receipt whereof is hereby acknowledged, THEY the said (*husband*) and (*trustee*), but as to the said (*trustee*) by way of conveyance only and not of warranty of title, at and by such request and nomination, and so testified as aforesaid, HAVE, and each of them HATH granted, bargained, sold, and released, and by these presents Do, and each of them DOTR grant, bargain, sell, release, and confirm unto the said (*trustees*) and their heirs, ALL," &c. (*as in the text*), ante, p. 291.

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(D) *Habendum where the Husband is Tenant in Tail of the Lands to be settled.* See ante, p. 291, n. (1).

“ UNTO and to the use of the said (*tenant to the præcipe*) and his heirs, to the intent that he the said (*tenant to the præcipe*) may become and be a perfect tenant of the immediate freehold of all and singular the said messuages, lands, tenements, and hereditaments, with their and every of their rights, members, appendancies, and appurtenances, in order and to the end that one or more good and perfect common recovery or common recoveries, with double or more voucher or vouchers, may forthwith, at the expense of the said (*intended husband*), be had and suffered of the same hereditaments. AND for that purpose it is hereby declared and agreed by and between all the said parties to these presents, as far as they respectively are interested, that it shall be lawful for the said (*demandant*) or some other person as demandant, before the end of this present term, or any subsequent term, to sue forth and prosecute out of his majesty's high court of Chancery, one or more writ or writs of entry *sur disseisin en le post*, returnable, and to be returned before his majesty's justices of the court of Common Pleas, at Westminster, thereby demanding against the said (*tenant to the præcipe*), the same messuages, lands, tenements, and hereditaments, with their appurtenances, by such apt and proper names, quantities, qualities, and other descriptions, as shall be sufficient to ascertain and comprise the same; to which said writ or writs of entry the said (*tenant to the præcipe*) shall appear gratis, either in his own proper person or by his attorney thereunto lawfully authorised, and shall vouch to warranty the said (*intended husband*), who shall also appear gratis, in his own proper person, or by his attorney or attornies thereunto lawfully authorised, and enter into the warranty of the said (*tenant to the præcipe*), and take the same upon himself, and vouch over to warrant the said hereditaments the

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common vouchee for the time being of the said court of Common Pleas, who shall also appear gratis, and enter into the warranty of the said (*intended husband*), and after imparlance, make default, so as that judgment may be thereupon had and given for the said (*demandant*), or such other demandant as aforesaid, to recover the said messuages, lands, tenements, and hereditaments, against the said (*tenant to the præcipe*); and for him the said (*tenant to the præcipe*) to recover in value against the said (*intended husband*), and for him the said (*intended husband*) to recover in value against the said common vouchee, or otherwise as is or may be usual and proper in such cases. AND it is hereby further agreed and directed, that execution shall be thereupon awarded and seisin had of the said hereditaments by the said (*demandant*) accordingly, and that all other acts, things, and proceedings, shall be had, done, and executed, which shall be needful or proper for suffering, executing, and perfecting such common recovery or common recoveries, with vouchers as aforesaid, for barring the estate tail of the said (*intended husband*) of or in the said premises, and all reversions and remainders over, thereupon expectant, according to the course of common recoveries for assurances of land used in like cases. AND it is hereby further declared and agreed by and between the said parties hereto, according to their respective estates and interests, that they and every of them shall and will use and assent to all and every means for giving effect to the said common recovery or common recoveries; and that from and immediately after suffering, executing, and perfecting the same, as well these presents and the assurance hereby made, as also the same common recovery or common recoveries, and also all and every other common recovery and common recoveries, fines, conveyances, and other assurances in the law whatsoever heretofore had, made, levied, suffered, or executed, of the messuages, lands, and hereditaments, hereinbefore granted and released, or expressed or intended so to be, or of any of them, or of any part thereof, by or between the said parties to these presents, or any of them, or whereunto they or any of them have been, or shall be parties or party,

privies or privy, or whereunto the said (*intended husband*) has been or shall be vouched, shall be and enure, and shall be adjudged, deemed, construed, and taken, and so are and were meant and intended, and are hereby directed to be and enure, as to all and singular the same messuages, lands, tenements, and hereditaments, and every part thereof, with their respective appurtenances, and the recoveror or recoverors, cognizees and grantees respectively, in the said common recovery or common recoveries, or other assurances named, or to be named, and his, her, or their heirs shall stand and be seised of the same and every of them, *To THE USES," &c. (as in the text), ante, p. 291.*

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(E) *Covenant to surrender Copyholds to the Uses of the Settlement.* See ante, p. 319, note, also ante, p. 247.

“AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the agreement aforesaid, with respect to the copyhold estates of the said (*intended husband*) holden of the manor of as aforesaid, and in order to effectuate the same, and for the considerations aforesaid, [and also for and in consideration of the sum of 10s. of lawful current money of England to the said (*intended husband*) in hand well and truly paid by the said (*trustees to preserve, &c.*) at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, HE the said (*intended husband*) for himself, his heirs, executors, and administrators, BOTH hereby covenant, promise, and agree with and to the said (*trustees to preserve, &c.*) their heirs, sequels in right (1), and assigns, that in case the said marriage shall take effect he the said (*intended husband*) or his heirs, shall and will at or before the next general or other court which shall be holden after the solemnization thereof, in or for the said manor of , at his and their own costs and charges, surrender or cause and procure to be surrendered into the hands of the lord or lords, or lady or ladies of the same manor, according to the custom thereof, ALL that copyhold or customary messuage, &c. or by whatsoever name or names, description or descriptions, the same copyhold or customary lands and hereditaments, or any or either of them, are, or is, or have, or has been called,

Sequels in
right.

(1) A copyhold being, by the technical notion of law, holden at the *will* only of the lord, (although of customary inheritance) the word “heirs” cannot strictly be applied to this species of tenure; the words “sequels in right,” i. e. those who may happen to succeed to the last possession, are therefore, frequently added to the common law words of inheritance.

known, described, or distinguished; Together with all and all manner of rights, privileges, easements, advantages, and appurtenances whatsoever to the said messuages or tenements, lands, hereditaments, and customary premises, or any of them, or any part thereof respectively belonging, or in anywise appertaining, or reputed or deemed so to be, or with the same or any of them now or heretofore holden, used, occupied, or enjoyed. AND which said surrender or surrenders shall, when made and perfected, be and enure to the uses, upon the trusts, and to and for the ends, intents, and purposes hereinafter declared or expressed concerning the same, (that is to say) To THE USE of the said (*intended husband*) and his heirs, until the said intended marriage shall be had and solemnized, and from and immediately after the solemnization thereof, to the use of him the said (*intended husband*) for and during the term of his natural life (1), and from and immediately after the de-

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of uses.

(1) Or, it may be,

“To THE USE of the said (*trustees*) and their heirs, but nevertheless in trust for the said (*intended husband*) during the term of his natural life.”

If the copyhold tenure be renewable on lives, say,

“To THE USE of the said (*trustees*) and their heirs, during the lives for which the same shall be then holden at the will of the lord, according to the custom of the said manor, upon the several trusts, and to and for the several ends and purposes hereinafter declared or expressed concerning the same (that is to say) IN TRUST to renew and fill up the lives now in being, and all other lives for which the said copyhold premises shall for the time being be holden, as and when the same shall drop, and by and out of the rents, issues, and profits of the said premises, or by mortgage thereof, or a competent part thereof, or by any other lawful ways or means levy, raise, and pay all fines, fees, and expenses attending any such renewal and filling up of a life or lives, and subject thereto, upon such trusts,” &c. see next page, n. (1).

Variation.

Estate renewable.

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termination of that estate, To the use of them the said (*trustees*) their heirs and assigns, to be holden of the lord or lords, or lady or ladies for the time being of the said manor or respective manors, according to the custom or customs of the same; subject only to the customary rents, dues, and services to be respectively paid and performed in respect thereof, but nevertheless as to the estate and interest of them the said (*trustees to preserve, &c.*) their heirs and assigns, in trust only and to and for the several ends, intents, and purposes hereinafter declared or expressed concerning the same, (that is to say) IN TRUST that they the said (*trustees*) or the survivor of them, or the heirs of such survivor, and their or his assigns, do and shall immediately upon the determination of the estate so limited in use to the said (*intended husband*) as aforesaid, and by and out of the yearly and other rents, issues, and profits thereof, pay unto the said (*intended wife*) and her assigns, for and during the term of her natural life, so much of the said annuity or yearly sum of £ hereinbefore given to her, in lieu and satisfaction of and for her dower and thirds at common law or freebench or widow's part, at the times and in the manner hereinbefore appointed for payment of the same, as the freehold and other lands and hereditaments hereinbefore charged with the payment thereof, shall be insufficient to discharge and satisfy; and from and immediately after the decease of the said (*intended wife*) or other the cessation or sooner extinguishment of the said annuity or yearly rent-charge of £ , and in the mean time subject thereto, UPON TRUST that (1) they the said (*trustees*) and the sur-

Small part
copyhold.

(1) If a very small part only of the settled premises be copyhold, the trusts may be more shortly expressed thus,

“ TO SUCH USES or upon such trusts as will best and nearest correspond, according to the rules of law and equity, and the nature and tenure of the said copyhold or customary messuages, lands, tenements, or hereditaments, with the several uses and trusts hereinbefore limited or de-

vivor of them, and the heirs of the survivor, and their or his assigns, shall stand and be seised or possessed of the said hereditaments and premises, IN TRUST for the first son of the body of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, and the heirs male of the body of such first son lawfully issuing; and in default of such issue, IN TRUST for the second, third, fourth, fifth, sixth, and all and every other the son and sons of the body of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, severally, successively, and in remainder one after another, as they and every of them shall be in seniority of age and priority of birth, and for the several and respective heirs male of the body and bodies of all and every such son and sons lawfully issuing, the elder of such sons and the heirs male of his body lawfully issuing being always to be preferred, and to take before the younger of such sons and the heirs male of his and their body and respective bodies lawfully issuing; and for default of such issue, IN TRUST for all and every the daughter and daughters of the said (*intended husband*) on the body of the said (*intended wife*) his intended wife, to be begotten, if more than one, equally to be divided between them, share and share alike, as tenants in common and not as joint-tenants, and for the several and respective heirs of the body and bodies of all and every such daughter and daughters lawfully issuing; AND if there shall be but one such daughter, then IN TRUST for such only daughter, and the heirs of her body lawfully issuing; AND in case there shall be more than one such daughter, and any or either of them shall happen to die without lawful issue of her or their body or

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clared of or concerning the freehold messuages, lands, tenements, and hereditaments hereinbefore granted and released or otherwise assured, or intended so to be, and with, under, and subject to such and the same or the like powers, provisos, declarations, and agreements as hereinbefore are or were intended to be declared or expressed concerning the same."

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intended hus-
band to be ad-
mitted, &c.

And pay fines.

respective bodies, then as to the original part or share, or parts and shares of her or them so dying without lawful issue, and also as to such other part or share, or parts or shares as by virtue of this present clause shall have become vested in or accrued unto the daughter or daughters so dying, IN TRUST for the survivors or survivor, or other or others of the said daughter or daughters, to be equally divided between them, if more than one, share and share alike, as tenants in common and not as joint-tenants, and for the several and respective heirs of her or their body or respective bodies lawfully issuing; AND in case all such daughters but one shall happen to die without lawful issue of her or their body or respective bodies, then IN TRUST for such surviving daughter, and for the heirs of her body lawfully issuing; and in default of such issue, then IN TRUST for the said (*intended husband*) and the heirs of his body begotten; and in default of such issue, then IN TRUST for the said (*intended husband*) his heirs and assigns for ever. [AND the said (*intended husband*) for himself, his heirs, executors, and administrators, doth hereby further covenant, promise, and agree with and to the said (*trustees*) and their heirs, that he the said (*intended husband*) shall and will upon and immediately after the said lands and hereditaments shall be so surrendered as aforesaid, cause or procure himself to be duly admitted to the same hereditaments at his own proper costs and charges; and shall and will pay such fine or fines upon such admission, as a person admitted tenant to the same premises in fee simple, ought of right to pay according to the custom and usage of the said manor or respective manors, so and to the intent that the remainder in fee of and in the said premises expectant on the decease of him the said (*intended husband*), may, on such admission, become fixed and vested in the said last mentioned trustees, and their heirs, without any occasion for them or any or either of them, or any future or other trustees or trustee to be substituted in their or his stead, to be admitted thereto, or to pay any fine or fines on their or his coming to the same in possession under or by virtue of the declaration or agreement hereinbefore contained relative

thereto; AND also, that he the said (*intended husband*) shall and will, at his own like costs and charges, cause and procure or use his best endeavours to cause and procure the uses and trusts hereby or intended to be hereby created or declared of or concerning the same, to be entered and inserted in or upon the court rolls of the said manor or respective manors, to the end and intent that the same uses and trusts, and the intention of the several parties to these presents in respect of the said hereditaments, may be the more certainly and effectually ascertained and preserved. AND the said (*trustees*) for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, but not either of them for the other, or the heirs, executors, or administrators of the other of them, do respectively covenant, promise, and agree with and to the said (*intended husband*) his heirs and assigns, that at the request in writing, and at the costs and expense of any issue of the said intended marriage, who shall become entitled to an equitable or beneficial estate tail of or in the said copyhold hereditaments, by virtue of these presents, (such issue at the time of such request, not being under the age of twenty-one years) or after the performance or satisfaction of the trusts hereby created or declared, or mentioned or intended so to be, then at the request in writing, and at the costs and charges of him the said (*intended husband*) his heirs or assigns, surrender or yield up according to the custom of the said manor or respective manors, the legal estate and interest then in him or them vested of and in the said premises, to the use and behoof of such issue, his, her, or their heirs and assigns; or in default or failure of such issue, to the use and behoof of him the said (*intended husband*) his heirs and assigns, or to such other person or persons, and for such estate or estates, uses, ends, intents, and purposes, as such issue or the said (*intended husband*) his heirs or assigns, as the case may require, shall by any writing under their or his hand and seal, or respective hands and seals direct or appoint, of or concerning the same."]

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And cause the trusts to be inserted on the court rolls.

Covenant by the trustees to surrender the premises on the trusts being fulfilled.

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MENTS.

If the copyholds to be settled be fettered by a prior intail, instead of this covenant, add,

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Copyholds
intailed.

“AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and in pursuance and further performance of the said recited agreement, and for the docking, barring, and extinguishing all estates tail and remainders expectant upon the copyhold or customary hereditaments hereinafter described, and for settling and assuring the same hereditaments UPON THE TRUSTS, and to and for the ends, intents, and purposes hereinafter expressed, ~~He~~ the said (*intended husband*) for himself, his heirs, executors, and administrators, doth covenant, promise, and agree with and to the said (*trustees*) their heirs and assigns, by these presents, in the manner following (that is to say) that he the said (*intended husband*) and his heirs, shall and will at the request of the said (*trustees*) or of the survivor of them, or the heirs of the survivor, or of his or their assigns, but at the proper costs and charges of the said (*intended husband*) his heirs, executors, or administrators, well and effectually surrender, convey, and assure, or cause to be conveyed, surrendered, or assured, in due manner and form, according to the custom of the said manor of , ALL, &c. and the reversion and reversions, remainder and remainders thereof, To THE USE and behoof of some person or persons to be named by the said trustees or trustee, and his or their heirs and assigns, to the end and intent that he or they may be admitted to the same, at the will of the lord or lords, or lady or ladies of the said manor, according to the custom thereof, that one or more good and perfect common recovery or common recoveries may be had and suffered of all and every the same copyhold or customary hereditaments, in the manner hereinafter expressed. AND it is hereby declared and agreed by and between all and every the parties hereto, that it shall be lawful for the person or persons so to be named, after such admission as aforesaid, to bring or sue forth and prosecute out of the said court baron, in or holden for the said manor of , according to the usual form and manner in such

cases accustomed in the same court, one or more plaint or plaints in the nature of a writ or writs of entry, *sur disseisin en le post*, thereby demanding by apt and proper names, quantities, number of acres, and other descriptions, the said copyhold or customary hereditaments and premises, against the person or persons who shall be so admitted as aforesaid as tenant or tenants thereof, to which said plaint or plaints the same tenant or tenants shall appear gratis in his or their own proper person or persons respectively, or by his or their attorney or respective attornies lawfully authorised in that behalf, and vouch to warranty the said (*intended husband*), who shall also appear gratis in his own proper person, or by his attorney or attornies lawfully authorised, and enter into the said warranty, and vouch over to warranty the common vouchee of the said court baron, who shall also appear and imparle, and after imparlance make default so that judgment shall and may be thereupon had and given for the demandant or demandants in or to the said writ or writs, to recover the said hereditaments and premises against such tenant or tenants as aforesaid, and for him or them respectively to recover in value against the said (*intended husband*) and the said (*intended wife*) his intended wife, and for them to recover in value against the said common vouchee, and all and every other act and acts shall be done and executed necessary or proper for the suffering and perfecting of such common recovery or common recoveries, with vouchers as aforesaid, and the true intent and meaning of these presents, and that execution shall or may be thereupon awarded and had accordingly; and it is hereby further declared and agreed by and between all and every the said parties to these presents, that immediately from and after the perfecting of the said recovery or recoveries, so as aforesaid to be suffered of the said copyhold and customary hereditaments and premises, and when and so often as the demandant or demandants therein shall have been fully seised of the same premises, then and in such case he or they shall and will forthwith surrender into the hands of the lord or lords, or lady or ladies of the said manors, all and every the copyhold and customary heredi-

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taments and premises, with the appurtenances, to the uses, upon the trusts, and to and for the several ends, intents, and purposes, and under and subject to the powers, provisos, declarations, and agreements hereinbefore expressed and declared of and concerning the freehold messuages or tenements, lands and hereditaments hereinbefore granted and released, or mentioned or intended so to be, as hereinbefore is mentioned, or as nearly thereto as the rules of law and equity, and the nature and tenure of the same copyhold and customary hereditaments and premises shall or may require or admit of; and in the mean time and until such surrender, common recovery or common recoveries, or other good and effectual conveyances and assurances of the said copyhold and customary hereditaments and premises shall be suffered and perfected for the purpose aforesaid, they the said (*intended husband*) and (*intended wife*) and their respective heirs, and all persons claiming or deriving, or who shall or may claim or derive any estate, right, title, interest, claim, or demand of, in, upon, or out of the same hereditaments and premises, or any part or parts thereof, by, from, or under him, her, or them, or any or either of them, shall and will stand and be seised or possessed thereof and interested therein, in trust for the several persons and for the several intents and purposes, upon or for which the same are hereby covenanted or agreed to be settled and assured."

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(F) If the settled premises or any considerable part of them consist of houses, or there be a valuable mansion-house on the estate, it will be proper to insert a stipulation for their insurance against fire: see *ante*, p. 378.

“AND that he the said (*intended husband*) shall and will, immediately after the execution hereof, at his own proper costs, charges, and expenses, insure or cause to be insured such of the said hereditaments and premises aforesaid as shall consist of houses or other buildings, in some reputable office or offices of insurance, within the cities of London and Westminster, against loss or damage by fire, in the full value of the same respectively, during the term of his natural life; and shall and will, and immediately after the making such insurance or insurances as aforesaid, if thereunto required by the trustees or trustee for the time being to preserve contingent remainders, or any or either of them, assign and transfer the policy or policies thereof, and all benefit and advantage to arise therefrom, unto such trustees or trustee, and their or his executors, administrators, or assigns, and shall and will from time to time pay, or cause to be paid, annually or otherwise, all and every such sum and sums of money into the office, society, or corporation in or by which such messuages, tenements, or buildings shall be so insured, as shall be requisite for continuing the same insurance or insurances, and shall and will thereupon deliver unto the said (*trustees to preserve, &c.*) or their heirs, or such other trustees or trustee for the time being as aforesaid, or to such other person or persons as they shall appoint, the receipt or receipts for such sum or sums of money as shall be so paid for such insurance; and in case the said (*intended husband*) shall at any time or times hereafter omit or neglect to pay such sum or sums of money as shall be necessary for keeping up the said insurances, or in case he shall not deliver to the said trustees or trustee such policy or policies, or produce such receipt or receipts as

Covenant to
insure premises
against fire.

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aforesaid, and also from and after the decease of the said (*intended husband*) and during the minority of any issue of the said intended marriage, who for the time being shall be entitled thereto, under or by virtue of any of the limitations hereinbefore contained, it shall be lawful for the said trustees or trustee, or any of them, and he and they are and is hereby required to make, or cause to be made and kept up, such insurance or insurances, and from time to time to deduct such sum or sums as shall be requisite for making and continuing the same, out of the rents, issues, and profits of the said hereditaments and premises hereby granted and released, or otherwise assured, or mentioned or intended so to be."

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(Ff.) *Power to grant Building Leases.* See *ante*, p. 358, n. (3).

“AND also to grant, demise, and lease, or limit and appoint by way of grant, demise, or lease, unto any person or persons whomsoever, and for such price or sum or other consideration or equivalent in rent or in money, or otherwise, any part or parts, or parcel or parcels of the said lands and hereditaments, for the purpose of being built upon, and also any of the said messuages or tenements and buildings, to any person or persons, in consideration of his or their erecting and building any messuage, dwelling-house, or cottage thereon, together with such part or parts of the said lands and hereditaments as shall be deemed expedient for making a yard or garden to such messuages or dwelling-houses, or any of them, for any term or number of years not exceeding ninety-nine years, to take effect in possession and not in reversion, or for one, two, or three life or lives, or for any term or number of years determinable on the death or deaths of one, two, or three person or persons, so as that there be not more than three lives, or any estate determinable on more than three lives in being at one and the same time, and so as such grantee or lessee, grantees or lessees, or his, her, or their heirs, executors, administrators, or assigns, be not made dispunishable for waste, &c.”

If the land furnish brick-earth, materials for roads, manure, or the like, add,

Leases for digging brick-earth, &c.

“AND also to grant, demise, or lease, or limit and appoint by way of grant, demise, or lease, unto or in trust for any person or persons whomsoever, and for such price or sum, or other consideration or equivalent, in rent or in money, or otherwise, as by him and them the said trustees or trustee for the time being shall be deemed reasonable, any part or parts of the said lands, grounds, and heredita-

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ments, for any term or number of years not exceeding ninety-nine years, for the purpose of digging for and procuring brick-earth, clay, loam, marl, sand, gravel, or ballast, with liberty, licence, and privilege to erect kilns, floors, and other proper works for the raising, converting, and manufacturing any of the said materials into bricks, tiles, or earthen-ware, and for vending or otherwise disposing of the same or other the said materials; all and every of the lessees in which said last-mentioned grants, demises, or leases to be named, shall or may be so far unimpeachable or dispunishable for committing waste, and have such liberty and privilege to do and commit waste, as by the said trustees or trustee for the time being shall be thought reasonable, for all or any of the purposes aforesaid; but so that in or by all and every such grants, demises, or leases, there be reserved and made payable yearly, during the continuance of the term estate and interest thereby to be granted, (over and besides any gross sum, fine, consideration money, or fore-gift, if any, which shall or may be agreed to be paid for the making the same respectively) as great or as good and beneficial a yearly rent and rents, to be incident to and go along with the immediate remainder or reversion, or reversionary interest which shall be next expectant on the determination of such grants, demises, or leases respectively, as was or were paid or reserved for the herbage, vesture, or surface of the ground so to be granted, demised, or leased, immediately before the granting, demising, or leasing thereof; and also such further or additional yearly rent or annual sum to be reserved and made payable to the said trustees or trustee for the time being, as to them or him shall seem reasonable, for the privileges and advantages thereby to be granted or given; and so as in all and every such grants, demises, and leases there be contained a condition, or clause in the nature of a condition of re-entry, in case the rent and rents, or other annual sum or sums thereby to be reserved, be behind and unpaid by the space of twenty-one days next after the same shall become due; and so as the respective grantees and lessees to whom such grants, demises, or leases shall be

made, do severally seal and deliver counterparts of the same respectively, and do enter into proper covenants for covering and levelling the pits to be made in pursuance of the said grants, demises, or leases, at or before the end of the term or terms thereby to be granted, with the old or surface mould, in a good and workmanship manner; and such other clauses, conditions, provisos, covenants, declarations, and agreements on the part of the several grantees or lessees of the said land or ground, as to the said trustees or trustee for the time being shall seem reasonable."

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(G.) *Power to grant Mining Leases.* See *ante*, p. 358, n. (3).

“ AND also to grant, demise, and lease unto any person or persons for any term or number of years not exceeding years, to take effect in possession and not in reversion, &c. *as above*, all and every or any of the mines and quarries now and already found and discovered open, or which shall or may at any time or times hereafter, be opened, found, or discovered in, under, or upon any of the lands and hereditaments hereinbefore granted and released; and also any part or parts of the same lands or hereditaments which it shall or may be deemed expedient to demise or lease, with any such mines and quarries, for the better and more effectually making the same; together with full and free liberty, licence, power, and authority to search for, take, use, and dispose of all such iron, stone, coals, ore, and other metals and minerals whatsoever, as shall be found in the same mines and quarries, or the veins thereof, and to dig, sink, drive, work, and make groves, shafts, drifts, trenches, sluices, and water-courses, and to erect any furnace or furnaces, or other erections, buildings, machines, or engines whatsoever, as well for the finding, discovering, winning, or working the said metals, minerals, ore, and materials out of the said mines and quarries, as for the avoiding and carrying off the water, foul air and stench from and out of the same; and also full and free liberty, licence, power, and authority to take and use sufficient ground-room, heap-room, and pit-room for laying, platting, and manufacturing of the iron, iron-stone, coals, earth, and rubbish which shall from time to time, proceed from, or be wrought, dug, or obtained out of the same mines and quarries; and also sufficient ways, paths, passages to and for the respective lessees, in such demises or leases to be named, and their agents, workmen, and servants, from time to time, during the continuance of such leases respectively, to take

and carry away with horses, carts, wains, waggon, and other carriages, the iron, iron-stone, coals, metals, ore, minerals, earth, and materials which shall, from time to time, be wrought, won, and gotten in, from, and out of the said mines and quarries; and also full and free liberty, licence, power, and authority to erect, build, and set up, in any convenient place or places, near unto or within yards from any of the said mines and quarries, all such houses, hovels, sheds, and other buildings as shall, from time to time, be necessary or convenient for the standing, laying, or placing any workmen, horses, metals, or materials to be employed or used in or about the working of the same mines and quarries respectively; and to dig and get stones, peat, clay, or spar for erecting, or building and repairing such houses and other buildings, or for the winning, working, obtaining, getting, washing, cleansing, and melting of the metals, minerals, ore, and produce of the said mines and quarries, and for the manufacturing, taking, and carrying away the same; so nevertheless, that upon all such leases there be respectively reserved and made payable, during the continuance thereof, the best or most improved yearly rent or rents, tolls, duties, or revenues that can be respectively had or gotten for the same, &c."

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(H.) *Power to make Partition* (1). See *ante*, p. 358, n. (3).

“PROVIDED ALWAYS, and it is hereby declared and agreed by and between the several parties to these presents, that it shall be lawful for the said (*trustees to preserve, &c.*) and the survivors and survivor of them, and the heirs, [executors, administrators,] and assigns of such survivor, and their or his assigns, or other the acting trustees or trustee for the time being, under or by virtue of these presents, and they are hereby severally directed and required, at any time or times hereafter, at the request and by the direction of the said (*intended husband*) and (*intended wife*) during their joint lives, and after the decease of either of them, then at the request and by the direction of the survivor of them, during his or her life; and after the decease of such survivor, then at the request and by the direction of the person or persons, who for the time being shall, by virtue of any of the limitations hereinbefore contained, be in the actual possession of or entitled to the rents, issues, and profits of the said hereditaments hereby limited or expressed to be limited in strict settlement, if such person or persons respectively shall be of the full age of twenty-one years; but if such person or persons respectively shall be under that age, then during the minority or respective minorities of any such person or persons respectively, at the request or by the direction of his, her, or their guardian or guardians, such request and direction to be testified by some writing or writings under the hand and seal or respective hands and

Power of sale
does not author-
ize partition.

(1) As much doubt and discussion has arisen as to whether a partition can be made under the usual powers of sale and exchange; see 2 Ca. Op. 94; *Abel v. Heathcote*, 2 Ves. jun. 100, 4 Brow. Ch. Rep. 278, S. C.; *Macqueen v. Farquhar*, 11 Ves. jun. 467. 476; it is proper that an express power for this purpose should be inserted in the settlement.

seals of the person or persons whose request or direction for the time being, is hereby made necessary, to join and concur with the person or persons seised of or entitled for the time being, to the hereditaments and premises, in making a partition or division of the entirety of the said hereditaments and premises, or any part or parcel thereof; and for the purpose of effecting any such partition or division as aforesaid, it shall be lawful for them the said (*trustees to preserve, &c.*) and the survivors and survivor of them, and the heirs, [executors, administrators,] and assigns of such survivor, and their or his assigns, and other the acting trustees or trustee for preserving contingent remainders for the time being, under or by virtue of these presents, at such request and by such direction, and to be so testified as last aforesaid, by any deed or deeds, instrument or instruments in writing, sealed and delivered by them or him in the presence of and attested by two or more credible witnesses, absolutely to revoke, determine, and make void, all and every or any of the uses, trusts, estates, powers, or provisos hereinbefore limited, declared, or expressed, of and concerning the same premises; and by the same or any other deed or deeds, instrument or instruments in writing, to limit, declare, direct, or appoint any such other or new use or uses, estate or estates, trust or trusts, of or concerning the hereditaments and premises of which the uses shall be so revoked as shall be thought necessary or expedient for the purpose of effectuating any such partition or division as aforesaid; and the said trustees or trustee so making, or concurring in such partition or division, are hereby authorised, empowered, and expressly directed and required to settle and assure, or cause to be settled and assured, the hereditaments which shall be received in lieu of or as a specific allotment for any part of the hereditaments hereby made partible, to such and the same uses, upon such and the same trusts, for such and the same intents and purposes, and with, under, and subject to such and the same powers, provisos, conditions, declarations, and agreements as are in and by these presents limited, expressed, declared, and contained of and concerning the hereditaments so hereby made partible as aforesaid, or

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Trustees may
receive sums
for equality of
partition.

as nearly thereto as the death of parties, and other intervening accidents or circumstances will admit; and also that any such partition may be provisionally made and concluded, notwithstanding there may subsist a possibility of some other or future person being thereafter born or coming into esse, who may become entitled, under or by virtue of the limitations aforesaid, or otherwise, to a part or portion of the said hereditaments so to be parted or divided. AND it is hereby also agreed and declared by and between the parties to these presents, that upon any such partition or division as aforesaid, it shall be lawful for the said (*trustees to preserve, &c.*) and the survivors and survivor of them, and the executors, administrators, and assigns of such survivor, and their or his assigns, and other the trustees or trustee for preserving contingent remainders for the time being of these presents, to receive or take any sum or sums of money, by way of equality of partition, and to give and sign receipts for the money so to be received, and that such receipt or receipts shall be a sufficient discharge and sufficient discharges to the person or persons paying any such sum or sums of money for the purpose aforesaid, and that such person or persons shall not afterwards be answerable for the loss, misapplication, or non-application, nor be in any wise bound or required to see to the application of the money in such receipt or receipts acknowledged to be received."

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(I.) *Power to divide and enclose common Fields.* See ante,
p. 359, notes.

“ PROVIDED ALSO, and it is hereby further declared and agreed by and between the several parties hereto, according to their several estates and interests, that it shall be lawful for the said (*intended husband*) in his lifetime, and for the said (*intended wife*) after his decease, in case she shall survive him, and after the decease of both of them, for the trustees or trustee for the time being, for the preservation of contingent estates, during the minority of any child or children as aforesaid, in or by indenture or indentures to be by him, her, or them signed, sealed, and delivered in the presence of two or more credible witnesses, to consent or agree to any settlement, division, partition, or enclosure of any common or commons, common fields or woods, waste or other lands, part or parts of the manors, lordships, messuages, lands, tenements, or hereditaments comprised in these presents, to be made with any other proprietor or proprietors, or other person or persons interested in such common or commons, common fields, woods, wastes, or other lands respectively, and to do, perform, and execute all such acts, deeds, matters, and things, as shall be requisite or proper for the granting, conveying, or otherwise assuring, to such other proprietor or proprietors, person or persons respectively, the fee-simple and inheritance of and in such part, share, parcel, lot, or allotment, and parts, shares, parcels, lots, and allotments of or in such commons or common fields, wastes, woods, and lands, as upon any such division, partition, or enclosure, shall be assigned or allotted to him, her, or them, to be holden in severalty, or for otherwise completing and perfecting the same, so that all and every such lands as shall be assigned or allotted to be holden in severalty, shall, upon the making of any such division, allotment, partition, or enclosure, be well and effectually limited, conveyed, and assured to such and the same uses, upon such and the same

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trusts, for such and the same ends, intents, and purposes, and by, and with, and under, and subject to such and the same charges, powers, provisos, limitations, declarations, and agreements, as the same stood limited and declared, at or immediately before the time of such division, allotment, partition, or enclosure being made, or to, for, upon, and subject to such of them as shall then be undetermined and capable of taking effect; and when any such division, partition, enclosure, or allotment shall be made, and the fee-simple and inheritance of the lands which shall be thereupon assigned or allotted to be holden in severalty, shall be well and effectually limited, settled, and assured in the manner last aforesaid, then all and every the lands and hereditaments which shall upon the same division, partition, enclosure, or allotment, be assigned or allotted to be holden in severalty to or by such other proprietor or proprietors, or person or persons, as is hereinbefore mentioned, shall be and remain thenceforth for ever freed and absolutely discharged of and from all and every the uses, estates, trusts, limitations, charges, powers, provisos, conditions, declarations, and agreements in or by these presents limited, declared, or expressed of and concerning the same; and then and from thenceforth these presents, and the grant and release, and limitations hereinbefore made, or agreed and intended so to be made, shall respectively operate, be, and enure as to and in respect of the lands and hereditaments which shall be assigned or allotted to be holden in severalty by such other proprietor or proprietors, or person or persons as aforesaid, to the only use and behoof of him and them the said proprietor or proprietors, or person or persons, and his, her, or their heirs and assigns, or otherwise as he, she, or they, by any deed, instrument, or writing, to be duly executed and attested according to the nature thereof, shall direct or appoint."

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(K.) *Power to enfranchise Copyholds.* See *ante*, p. 358,
n. (3).

“AND FURTHER, that it shall be lawful for the said (*trustees to preserve, &c.*) and for the survivor of them, and the heirs and assigns of such survivor, and their and his assigns, or other the trustees or trustee for the time being to preserve contingent remainders, and he and they is and are hereby authorised, empowered, and directed, by and with the consent and approbation of the said (*intended husband*) and (*intended wife*) or of the survivor of them, during their, his, or her life or lives, such consent and approbation to be signified under their, his, or her hands or hand; and after the decease of the survivor of them the said (*intended husband*) and (*intended wife*), then of the proper authority of them the said trustees or trustee, from time to time, and at all or any time or times hereafter, for or upon payment of any sum or sums, or other price or consideration in money, or otherwise, which he or they shall think reasonable, to enfranchise and make free all or any of the copyhold or customary messuages, lands, tenements, or hereditaments, parcel, or reputed parcel, of the said manor of , and by any deed or deeds, to be sealed and delivered by him or them, in the presence of two or more credible witnesses, to grant, bargain, and sell, unto and to the use of or in trust for any person or persons whomsoever, the freehold and inheritance of the same messuages, lands, tenements, or hereditaments, so and in such manner as that the person or persons, to or for the benefit of whom such enfranchisements, grants, bargains and sales, shall be respectively made, and his and their heirs and assigns, shall and may respectively hold and enjoy the hereditaments which shall be so enfranchised, and of which the freehold and inheritance shall be so granted, bargained, and sold, as aforesaid, freed and discharged of and from all fines, and other payments, by way of fines for admittance, and of and

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from all heriots, suits, customs, and customary services from thenceforth to grow, or which would otherwise grow due, to the lord or lords of the said manor, for or in respect of the same ; yet so as upon every such enfranchisement, grant, bargain, and sale which shall be so made, there shall be reserved and made payable to the lord or lords of the said manor for the time being, the ancient yearly rents and payments by way of chief-rents, quit-rents, or rent-services, with such suit of court in or to the said manor, or yearly rent and services, as by them the said (*intended husband*) and (*intended wife*) or (*trustees*), or the survivor of them, as aforesaid, shall be deemed to be as good and beneficial as the yearly rents, customary or annual payments, suits, or services which now are, or anciently and accustomarily were paid or rendered, or ought to have been paid and rendered, for the same, and also all such rights and privileges of fowling, hunting, and hawking, and of chasing, and of killing game and beasts of chase, and piscaries, and fishings, and other regulations and manual rights and privileges as were anciently used, exercised, or enjoyed, or might be rightfully used, exercised, or enjoyed by the lord or lady of the said manor for the time being."

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(L.) *Power for charging the settled Premises with a Sum of Money* (1). See *ante*, p. 858, n. (3).

“PROVIDED ALWAYS, and it is hereby further agreed and declared by and between the parties to these presents, that subject and without prejudice to the said power of leasing and other the powers hereinbefore contained, and the term or terms of years, if any, which shall be limited under or by virtue of the same, or any of them, and notwithstanding any other of the said uses, estates, or trusts hereby limited or created or declared, it shall be lawful for the said (*intended husband*) (*or as the case may be*) (2) to borrow and take up at interest, any sum or sums of money, not exceeding in the whole the sum of £ , on the security of all or any part of the lands and hereditaments hereinbefore granted and released, or otherwise assured, for his own use and benefit, or the benefit of any other person or persons whomsoever (3); and also by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by him in the presence of and to be attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to be respectively signed, pub-

(1) A power to charge a particular sum on the settled estates, although it may operate in diminution or defeazance of prior limitations, is held not to be within the 27th Eliz. c. 4, against powers enabling persons to revoke or alter their conveyances; see *Jenkins v. Keymis*, 1 Lev. 150. Power to charge not within 27 Eliz.

(2) A power reserved to husband to charge the settled estate is not confined to the limitation immediately preceding the reversion to him, but will overreach all the prior limitations; *Stackhouse v. Barnston*, 10 Ves. 453.

(3) And such charge may be for the benefit of the wife if she survive, who will be a creditor within 13 Eliz. c. 5, against fraudulent conveyances; *Rider v. Kidder*, 10 Ves. 360.

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lished, and declared by him in the presence of and to be attested by three or more credible witnesses, to charge all or any of the said lands and hereditaments with the payment of the same sum or sums of money, or any other sum or sums not exceeding in the whole the said sum of £ ; and for the better securing the payment of any such sum or sums of money, with lawful interest for the same, it shall be lawful for him the said (*intended husband*) by the same deed or deeds, instrument or instruments, will or wills, codicil or codicils, or by any other deed or deeds, instrument or instruments in writing, or codicil or codicils thereto, to be respectively executed and attested as aforesaid, to limit and appoint the lands and hereditaments so to be charged therewith, to any person or persons whomsoever, for any term or number of years whatsoever, so that the estate or estates so to be limited or created shall be made subject to redemption, on payment by the person or persons who shall be entitled to the hereditaments to be comprised in the said term or terms, immediately upon the determination thereof, of the money so to be borrowed and charged as aforesaid."

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(N.) *General Power of Revocation of Uses.* See *ante*,
p. 394, n. (1).

“ PROVIDED ALWAYS, and it is hereby further declared and agreed to be the true intent and meaning of these presents, and of the several directions, limitations, and appointments, and grants and releases hereinbefore contained, that it shall be lawful for the said (*intended husband*) and (*intended wife*) from time to time, and at any time or times hereafter, during their joint natural lives, by any deed or deeds, instrument or instruments in writing, under their hands and seals, to be by them sealed and delivered in the presence of and attested by two or more credible witnesses, jointly to change, vary, alter, or revoke (1), repeal, de-

(1) At the common law, and before the statute of uses, no power of revocation could be annexed to a conveyance, by reason of its repugnancy to the preceding grant; see Co. Lit. 237, a.; and now by the 27th Eliz. c. 4, s. 5, perpetuated by 30 ib. c. 18, s. 3, it is enacted, that “ every conveyance, gift, grant, demise, charge, limitation of use or assurance of, in, or out of any lands, tenements, or hereditaments, with any clause, provision, article, or condition of revoking, determining, or altering the same, at the free will and pleasure of the settler; and he shall afterwards sell, convey, or charge the said lands, tenements, or hereditaments to any person for money, or other good consideration (the said first conveyance, gift, grant, demise, charge, or limitation, not having been previously revoked or altered in pursuance of the power reserved by the said secret conveyance, assurance, gift, or grant), such former conveyance or assurance shall, against the vendees, lessees, or grantees, and others claiming under them, be void.” This act, however, it is to be observed, extends only to voluntary conveyances and settlements made without any valuable consideration (as a settlement after marriage founded only on the moral duty of a husband to provide for his wife and children), unless such settle-

In what cases
good.

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termine, or make void, all and every, or any of the uses, trusts, estates, charges, powers, provisos, conditions, limitations, declarations, and agreements in and by these presents limited, declared, or expressed respectively, of and concerning the said messuages, lands, tenements, hereditaments, and premises granted and released as aforesaid, or any of them, or any part thereof, except with respect to the two several rent-charges of £ and £ , so hereinbefore by these presents limited to the said (*intended wife*) and the several powers and remedies hereinbefore contained, or by law given or supplied for securing and recovering the same respectively; and except also with respect to the said two several terms of 99 years and 1000 years, hereinbefore limited to the said (*trustees for wife's pin-money*) and (*trust-*

ment be in pursuance of articles before marriage, and not to a settlement made prior to the marriage, the marriage itself being considered as a valuable consideration, so far as it provides for the wife and the issue of the marriage; *Colville v. Parker*, Cro. Jac. 158; *Griffin v. Stanhope*, *ib.* 454; *Douglas v. Ward*, 1 Ch. Ca. 29; *Brown v. Jones*, 1 Atk. 188; *Nairne v. Prowse*, 6 Ves. jun. 752; or the issue of a preceding marriage; *Newstead v. Searles*, 1 Atk. 265. In these, therefore, and other conveyances founded upon a *bond fide* and sufficient consideration, a power of revocation may be reserved without endangering the settlement: this power should not, however, be given at the simple will and pleasure of the settler, but with the assent of some person so interested, either beneficially or otherwise, as to be a check upon an arbitrary execution of the power; *Buller v. Waterhouse*, Sir T. Jones, 94; *Cross v. Faustenditch*, Cro. Jac. 180; *Lavender v. Blackstone*, 3 Keb. 526, 2 Lev. 146; *Tarbach v. Marbury*, 2 Vern. 510; without which, it should seem, from the above cited case of *Buller v. Waterhouse*, if it contain an arbitrary power of revocation, that it will be void against any subsequent purchasers, whether the settlement be valuable or voluntary; and see *St. Saviour's case*, Lane, 21, and Rob. Stat. Fraud. c. VI. p. 637; see also *Doe dem. Bothwell v. Martyr*, 1 New Rep. 362; *Doe dem. Otley v. Manning*, 9 East, 59; also Sugd. Vend. and Pur. c. XVI. p. 483; Sugd. on Pow. c. VIII.

tees for wife's jointure) respectively, their executors, administrators, and assigns, for the better securing the due payment of the same two several rent-charges respectively; and by the same or any other deed or deeds, instrument or instruments in writing, to be sealed, and delivered, and attested as last aforesaid, jointly to limit, declare, appoint, or create, any other use or uses, estate or estates, trust or trusts, charges, limitations, powers, provisos, conditions, or agreements of and concerning the same hereditaments and premises, or of any of them, or of any part thereof, as to them the said (*intended husband*) and (*intended wife*) shall seem fit; so nevertheless that no such revocation, alteration, or determination of the old uses or limitations, declarations, or appointment of new uses, do or shall in any wise prejudice or affect any sale, mortgage, disposition, lease, exchange, division, partition, or allotment, or other disposition which shall have been previously made of any of the said hereditaments or premises, pursuant to the uses, trusts, powers, declarations, or agreements, hereinbefore contained concerning or relative to the same."

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No. III.

Marriage Settlement of Freehold Lands in a general and concise Form (1).

*Variations where the Settler is seised to himself and a Trustee for preventing Dower.
Other Variations as in Margin below (2).*

Parties.

THIS INDENTURE, of three parts, made the day of in the year of the reign, &c. and in the year of our Lord . BETWEEN (*the intended husband*) of, &c. of the first part, (*the intended wife*) of, &c. of the second part, and (*the trustees*) of, &c. of the third

Small estate.

(1) The preceding form, No. II. is adapted to the settlement of large estates designed to be continued in the family, by strict limitations, to as remote a period as possible, and at the same time to furnish such ample provisions for the wife, and the younger children of the marriage, as are deemed requisite in the higher stations of society; but as circumstances of this kind are comparatively of unfrequent occurrence, it has been thought proper to insert the form of a settlement of the same kind of property, adapted to the more ordinary situations of life, where a distribution of the settled estates for the equal support of all the issue of the marriage, after the decease of the parents, is very properly considered to be a more rational object than a regard to primogeniture.

(2) See also notes and variations to No. II, *ante*, p. 281, et seq.

part. WHEREAS (1) a marriage hath been agreed upon and is intended to be shortly had and solemnized between the said (*intended husband*) and (*intended wife*). AND WHEREAS the said (*intended husband*) is seised (2) in his demesne as of fee, by descent from his ancestors, of the several messuages, lands, tenements, and hereditaments hereinafter described (3). AND WHEREAS upon the treaty for the said intended marriage, it was agreed that the said messuages, lands, tenements, and hereditaments should be conveyed and assured by the said (*intended husband*) unto the said (*trustees*) to the uses, upon the trusts, and for the ends, intents, and purposes hereinafter expressed concerning the same. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the said intended marriage, and for making a provision for the said (*intended wife*) in case the said marriage shall take effect, and for the issue, if any, of the said intended marriage (4), [and also for and in con-

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Recital of intended marriage.

WITNESS, that in consideration of the marriage.

(1) If the settlement be made in pursuance of previous articles of agreement, see *ante*, No. II. p. 283, n. (2), p. 401, rider (A). Previous articles.

(2) If the husband took the estate to himself and a trustee to prevent dower, recite here the deed by which it is so limited to him, as *ante*, No. II. p. 284, n. (1), and p. 406, rider (B). Husband and his trustee.

If he be tenant in tail only of the premises, recite here the deed or will by which it was created, as *ante*, No. II. p. 284, n. (1). Tenant in tail.

(3) If part of the estate be copyhold, see *ante*, No. II. p. 285, Copyholds. n. (1).

(4) If the intended husband be tenant in tail of the lands proposed to be settled, see *ante*, No. II. p. 289, n. (1). Tenant in tail.

SETTLEMENTS.

MARRIAGE.

Settlement of
Freeholds.
(Concise Form.)The intended
husband grants
and conveys.

sideration of the sum of 5s. of lawful current money of that part of the United Kingdom of Great Britain and Ireland called England, to the said (*intended husband*) in hand well and truly paid by the said (*trustees*) at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged (1),] He the said (*intended*

Husband and
trustee.

(1) If the intended husband took the estate to himself and a trustee to prevent dower, in the usual form of limitation for that purpose, he may here either *appoint* to the trustees of the settlement, in pursuance of the *power* given to him, or may grant and convey, by virtue of the *estate* vested in him under such limitation.—But as in the first of these cases, the *uses* or legal fee will be absolutely vested in the trustees, and the ulterior limitations consequently be only *trusts*, see *ante*, Vol. I. No. XXVIII. and Vol. II. No. XXXIV. the latter mode should be adopted where the intent is to give the legal freehold to the persons meant to have the beneficial enjoyment of the premises for the time being. In which case add,

“AND for and in consideration of the sum of 10s. of lawful current money of England, to the said (*intended husband*) and (*trustee to prevent dower*) respectively, in hand well and truly paid by the said (*trustees*), at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, He the said (*intended husband*) in pursuance and by virtue of the estate and interest vested in him, in or by the said in part recited indentures of lease and release, or otherwise, and not in exercise of the power of appointment thereby given or reserved to him as aforesaid, HATH granted, bargained, sold, aliened, and released, and by these presents DOth grant, bargain, sell, alien, release, and confirm, and the said (*trustee to prevent dower*) with and by the privity and direction of the said (*intended husband*) testified by his being a party to and sealing and delivering these presents,

husband) (1) HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, release, and confirm unto the said (*trustees*) (2) and their heirs, ALL, (3) &c. or howsoever otherwise the said messuages, lands, tenements, and hereditaments, or any of them, now are or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; and also all other the messuages, lands, tenements, and hereditaments, (if any) which are comprised in and expressed, or intended to be conveyed by a certain indenture of bargain and sale for a year, hereinafter referred

SETTLEMENTS.

MARRIAGE.

Settlement of
Freeholds.
(Concise Form.)

Parcels.

HATH bargained, sold, aliened, and released, and by these presents DOTH bargain, sell, alien, and release, and by way of conveyance only, and not for or by way of warranty of title, DOTH grant and confirm unto the said (*trustees*) and their heirs, ALL," &c. *as above*.

See also *ante*, p. 407, rider (C).

(1) If the estate be the wife's, see *ante*, No. II. p. 290, Wife's estate. n. (1).

(2) If the estate to be settled be entailed, the grant and Estate tail. release must be to the tenant to the præcipe; as *ante*, p. 409, rider (D).

(3) Here describe the subject of the conveyance by its ancient Parcels. and present name, situation, tenancy, &c.; see *ante*, Vol. I. No. XXVII. p. 405, note.

If the conveyance be of a moiety or other portion only of the Moieties, &c. estate, see the mode of description, &c.; see *ante*, Vol. I. No. XXVI. p. 384.

If it be of a remainder or reversion expectant upon the de- Remainder, &c. termination of a prior estate, see *ante*, Vol. I. No. XXIV. p. 346.

SETTLEMENTS.

MARRIAGE.

Settlement of
Freeholds.
(Concise Form.)

General appurtenances.

Reference to
the bargain and
sale for a year.

to as bearing date the day next before the day of the date hereof; TOGETHER with all [houses, out-houses (1), buildings, barns, stables, coach-houses, dove-houses, yards, cellars, vaults, areas, benefit and advantage of ancient and other lights, ways, paths, passages, gardens, orchards, ponds, waters, land covered with water, water-courses, timber and other trees, woods, underwoods, and the ground and soil thereof, mines, quarries, rights and privileges of common, feeding and foldage of every kind, and all] and all manner of [other] rights, privileges, easements, advantages, conveniences, appendages, and appurtenances whatsoever to the said messuages, lands, tenements, hereditaments, and premises, or any of them, or any part thereof respectively belonging, or in any wise appertaining, or reputed or deemed so to be, or with the same or any of them, now or heretofore holden, used, occupied, or enjoyed, (ALL which said messuages, lands, tenements, and hereditaments are now in the actual possession of, or legally and fully vested in the said (*trustees*) by virtue of a bargain and sale (2) to them thereof made by the said (*intended husband*) for five shillings consideration by indenture, bearing date on the day next before, and executed

General words.

Lease for a
year.

(1) See general words applicable to different kinds of real property, INDEX, *voce* GENERAL WORDS.

(2) See the form of the bargain and sale for a year, Vol. I. No. XIII. p. 110.

previously to the sealing and delivery of these presents, for the term of one year, commencing from the day next preceding the day of the date of the same indenture, and by force of the statute made for transferring uses into possession) and the reversion and reversions, remainder and remainders expectant upon the said term, or of any other particular estate or estates of and in the said hereditaments and premises, and every of them respectively, and all and singular the rents, issues, profits, and proceeds, to arise or become payable for or in respect of the same, or of any part thereof. AND all the estate, right, title, interest, use, trust, property, possession, possibility, claim, and demand whatsoever, both at law and in equity, of him the said (*intended husband*) in, to, out of, upon, or respecting the said hereditaments and premises, or any of them, or any part thereof. TOGETHER with all deeds, muniments, writings, and evidences whatsoever, which in any wise relate to the same premises, or any part thereof, either alone or together with other hereditaments or property of inferior value, and which now are or hereafter shall or may be in the possession or lawful power of the said (*intended husband*) his heirs, executors, or administrators, or of any person or persons from whom he or they can or may procure the same without action or suit at law or in equity; and true and attested copies duly stamped, when and as the said (*trustees*) their heirs or assigns, shall re-

SETTLE-
MENTS.

MARRIAGE.

*Settlement of
Freeholds.
(Concise Form.)*

Grant of title
deeds,

and copies.

SETTLEMENTS.**MARRIAGE.**

*Settlement of
Freeholds.
(Concise Form.)*

To hold to the
trustees.

quire the same, of the several deeds, muniments, writings, and evidences, comprised or mentioned in the schedule hereunder written, or hereunto annexed, and of all other deeds, muniments, writings, and evidences, if any, not being of record, which now are or hereafter shall or may be so in his or their possession, custody, or power as aforesaid, in any wise relating to the same hereditaments and property, or any of them, jointly with other hereditaments or property of equal or greater value, such copies, when first required, to be made and delivered at the expense of the said (*intended husband*) his heirs, executors, or administrators; but all future copies to be made and taken at the expense of the person or persons requiring the same, To HAVE AND TO HOLD the said (1) messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore and in the said indenture of bargain and sale described, and hereby granted, released, and confirmed, or otherwise assured, or mentioned or intended so to be, with their and every of their rights, members, privileges, appendages, and appurtenances, unto the said (*trus-*

Moiety, &c.

(1) If the conveyance be of a moiety or other portion only of the estate, see Vol. I. No. XXVI.

Remainder, &c.

If of a remainder or reversion, see *ib.* No. XXIV.

Tail.

If the husband be tenant in tail only, see *ante*, No. II. p. 294, n. (2).

tees) (1) their heirs and assigns for ever; but to the uses nevertheless, upon the trusts, and for the

SETTLEMENTS.

MARRIAGE.

Settlement of
Freeholds.
(Concise Form.)

Husband tenant
in tail.

(1) If the intended husband be tenant in tail of the lands intended to be settled, say,

“UNTO and to and for the use and behoof of him the said (*tenant to the præcipe*) his heirs and assigns for ever, to the intent that he the said (*tenant to the præcipe*) may become and be a perfect tenant of the immediate freehold of all and singular the same messuages, lands, tenements, and hereditaments, with their and every of their rights, members, and appurtenances, in order and to the end that one or more good and perfect common recovery or common recoveries, with double or more voucher or vouchers, may forthwith, at the expense of the said (*intended husband*), be had and suffered of the same premises; and for that purpose it is hereby declared and agreed by and between the said parties hereto, that it shall be lawful for the said (*demandant*), or some other person as demandant, before the end of this present term, or any subsequent term, to sue forth and prosecute out of his Majesty's High Court of Chancery, one or more writ or writs of entry *sur disseisin en le post*, in which said writ the said (*demandant*) shall demand against the said (*tenant to the præcipe*) who shall vouch to warranty the said (*intended husband*), who shall vouch the common vouchee in such manner as is usual in like cases, so that judgment may be given for the said (*demandant*) to recover the said messuages, lands, and hereditaments against the said (*tenant to the præcipe*), and for the said (*tenant*) to recover in value against the said (*intended husband*), and for the said (*intended husband*) to recover in value against the common vouchee, and that execution may be awarded, and seisin had upon such recovery or recoveries, according to the usual course in like cases. AND it is hereby directed, declared, and agreed by and between the parties to these presents, as far as they respectively are interested, that after the recovery or recoveries

SETTLEMENTS.

MARRIAGE.

*Settlement of
Freeholds.
(Concise Form)*

To the use of
intended hus-
band, until mar-
riage.

Remainder to
the use of in-
tended husband
for life.

several ends, intents, and purposes, and under and subject to the several provisos, limitations, declarations, and agreements hereinafter declared or expressed of or concerning the same, that is to say, To THE USE of the said (*intended husband*) and his heirs, until the said intended marriage shall be had and solemnized; and from and immediately after the solemnization thereof, To THE USE of the said (*intended husband*) and his assigns, for and during the term of his natural life (1),

hereby agreed to be suffered shall be suffered and perfected, the same and all other recoveries suffered, and to be suffered of the same messuages, lands, tenements, and hereditaments, or any of them, either alone or together with other lands or hereditaments, shall, as to and concerning the messuages, lands, tenements, and hereditaments hereinbefore granted and released, or otherwise assured or intended so to be, with the appurtenances, be and enure TO THE USE of the said (*intended husband*) and his heirs, until the said intended marriage shall be had and solemnized, &c." *as in the text.*

Wife's inheritance.

(1) If the estates be the inheritance of the wife, and the husband be in trade, or likely to become so, it will be proper, in order to secure a provision for his family, to shift the limitation in the event of his becoming a bankrupt; and that such a condition is good, see *Lockyer v. Savage*, 2 Stra. 947; *Stratton v. Hale*, 2 Brow. Ch. Rep. 490; *Ex parte Cook*, 8 Ves. jun. 353; *Ex parte Meaghan*, 1 Sch. and Lef. 179; *Brandon v. Robinson*, 1 Rose Rep. 197; *Ex parte Hinton*, 14 Ves. jun. 598; *Higginson v. Kelly*, 1 Ball and Beat. 252. The form of such limitation may be,

Shifting use on
bankruptcy.

"To THE USE of the said (*intended husband*) and his assigns, for and during the term of his natural life, or until

without impeachment of or for any manner of waste, other than wilful and malicious waste; and from and immediately after the determination of that estate, by forfeiture or otherwise in his lifetime, To THE USE of the said (*trustees*) and their heirs, during the natural life of the said (*intended husband*), IN TRUST to preserve the contingent uses and estates hereinafter limited from being defeated or destroyed, and for that purpose to make entries or bring actions, as occasion may require, but nevertheless to permit and suffer the

SETTLEMENTS.

MARRIAGE.

Settlement of
Freeholds.
(Concise Form.)

To the use of
trustees to pre-
serve contingent
remainders.

he shall commit an act of bankruptcy within the meaning of any statutes made or to be made in relation to bankrupts, traders, or others, whereon a commission shall issue, or he shall be so found or declared a bankrupt, [or until he shall make any composition with his creditors for the payment of his debts, although a commission of bankruptcy shall not issue against him, or until he shall make any assignment of his effects for the benefit of his creditors, which shall first happen]; and from and after the decease of the said (*intended husband*), or his committing any act of bankruptcy whereon a commission shall issue, or his being found or declared a bankrupt, or making any such composition or assignment as aforesaid, then To THE USE of the said (*intended wife*),” &c. as above.

But this mode of protection will be permitted in respect of the *wife's* property only, and not of that of the husband; every attempt for extending it to his property being considered as a fraud upon his creditors; see *ex parte* Murphy, 1 Sch. and Lef. 44; *ex parte* Henecy, cited *ib.* 46; *ex parte* Cooke, 8 Ves. jun. 353; 1 Ball and Beat. 256; Higginbotham v. Holme, 19 Ves. 88; *ex parte* Hodgson, *ibid.* 206; *ex parte* Young, 1 Buck. 179; but not so of the property of a third person, as the wife's father; *ex parte* Oxley, 1 Ball and Beat. 257.

SETTLEMENTS.

MARRIAGE.

Settlement of
Freeholds.
(Concise Form.)

To the use of
intended wife
for life.

To the use of
trustees to sup-
port contingent
remainders.

said (*intended husband*) and his assigns to receive and take the rents, issues, and profits thereof, to and for his and their own use and benefit; and from and immediately after the decease of the said (*intended husband*), To THE USE of the said (*intended wife*) and her assigns, for and during the term of her natural life, without impeachment of or for any manner of waste, other than wilful and malicious waste, as and for, or in the nature of a jointure for her the said (*intended wife*), and {or but not (*according to the agreement of the parties*)} in lieu, satisfaction, and bar of all dower, free bench, or thirds, either at the common law or by custom, which she the said (*intended wife*) may or otherwise might have, or be entitled to, or claim or demand in or out of any the present or future manors, messuages, lands, tenements, hereditaments, or other estates or property of him the said (*intended husband*); and from and immediately after the determination of the said estate by forfeiture or otherwise in her lifetime, To THE USE of the said (*trustees*) and their heirs, during the natural life of the said (*intended wife*) IN TRUST to preserve the contingent uses and estates hereinafter limited from being defeated or destroyed, and for that purpose to make entries or bring actions as occasion may require, but nevertheless to permit and suffer the said (*intended wife*) and her assigns, to receive and take the rents, issues, and profits thereof, to and for her and their own use and benefit; and from and after the decease of the survivor or longest liver

of them the said (*intended husband*) and (*intended wife*), then To THE USE (1) of all and every or such one or more child or children, (2) whether male or female, of the body of the said (*intended husband*) on the body of the said (*intended wife*)

SETTLEMENTS.

MARRIAGE.

Settlement of
Freeholds.
(Concise Form.)

(1) If the estate be the inheritance of the wife, and be limited over upon her decease, there is sometimes added a power for the trustees to pay to him an annuity for his life out of the settled premises, as,

To the use of
such child as
husband and
wife shall ap-
point.
Wife's estate.

“AND from and after the decease of the said (*intended wife*), To THE USE, intent, and purpose, that they the said (*trustees*) and the survivor of them, and the heirs, executors, and administrators of such survivor, and their and his assigns, and other the future trustees aforesaid, do and shall, by and out of the rents, issues, and annual produce of the said messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or mentioned or intended so to be, raise and pay, or cause to be raised and paid unto the said (*intended husband*) and his assigns, in case he shall survive the said (*intended wife*) his intended wife, for and during the term of his natural life, one annuity or clear yearly sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency, free and clear of and from all taxes, deductions, and abatements whatsoever, (save only and except the present or any future tax upon property or income) by four equal quarterly payments, (that is to say) on the day of , the day of , the day of , and the day of , in each and every year, the first quarterly payment of the said annuity or yearly sum of £ to begin and be made on such of the said days of payment as shall first or next happen after the decease of the said (*intended wife*).”

Power for trustees to pay husband an annuity during his life.

(2) If the estate be intended to be limited to the first and other sons in strict settlement, see *ante*, No. II. p. 307.

Strict settlement.

SETTLE-
MENTS.

MARRIAGE.

Settlement of
Freeholds.
(Concise Form.)

In default of
joint appoint-
ment, as sur-
vivor shall ap-
point.

his intended wife to be begotten, for such estate and estates, interest and interests, and in such parts, shares, and proportions, manner and form, and subject to such charges and payments to any one or more of such child or children, and with and under such restrictions, limitations, and powers, with or without power of revocation, as he the said (*intended husband*) at any time or times during his life, in or by any deed or writing to be by him (1) sealed and delivered in the presence of and attested by two or more credible witnesses, shall direct, limit, or appoint; and in default of such direction, limitation, or appointment, and as to such part or parts thereof, whereof there shall be no such direction, limitation, or appointment, and in case any such shall be made, then when and as the estates and interests thereby directed, limited, and appointed, shall respectively end and determine To THE USE of all and every or such

(1) When the property is small, although the wife's, it is usual to intrust the husband with the sole power of appointing the property amongst the children; *Dillon v. Dillon*, 1 Ball and Beat. 91; but if it be agreed that they shall have a joint power of appointment, say,

“As they the said (*intended husband*) and (*intended wife*) his intended wife, at any time during their joint lives, in and by any deed or deeds, writing or writings, to be by them both sealed and delivered, in the presence of and attested by two or more credible witnesses, or by any writing or writings purporting to be in the nature of his or her last will and testament, or any codicil or codicils thereto, to be by him or her signed and published in the presence of, and attested by, three or more credible witnesses, shall direct, limit, or appoint.”

one or more child or children of the body of the said (*intended husband*) on the body of the said (*intended wife*) his intended wife to be begotten, for such estate and estates, interest and interests, and in such parts, shares, and proportions, manner and form, and subject to such charges and payments to any one or more of such child or children, and with and under such restrictions, limitations, and powers, with or without power of revocation, as the survivor of them the said (*intended husband*) and (*intended wife*) his intended wife, after the death of the other of them, by any deed or instrument in writing to be by him or her sealed and delivered in the presence of, and attested by, two or more credible witnesses, or by his or her last will and testament; and in default of such direction, limitation, or appointment (1),

SETTLEMENTS.

MARRIAGE.

Settlement of
Freeholds.
(Concise Form.)

In default of
appointment.

(1) Instead of the estate being divided amongst the children, it is frequently considered more beneficial to them that it should be sold, and the produce divided, in which case say,

In default of
appointment,
trustees to sell,

“AND in default of such last mentioned direction or appointment being made, then TO THE USE of the said (*trustees*) and their heirs, UPON TRUST that they the said (*trustees*) or the survivors or survivor of them, or the heirs of the survivor, or their or his assigns, do and shall as soon as conveniently may be after the decease of the survivor of them the said (*intended husband*) and (*intended wife*), make sale and dispose of the said hereditaments and premises, either together or in parcels, and either by public sale or private contract, for the best price or prices in money that in their opinion can be reasonably obtained or expected for the same, with full power to sign and give receipts for the sum and sums for which the said hereditaments, or any of

SETTLEMENTS.

MARRIAGE.

Settlement of
Freeholds.
(Concise Form.)

and divide the
purchase money
amongst the
children of the
marriage.

Proviso of sur-
vivorship be-
tween the
children.

and as to such part or parts thereof whereof there shall be no such direction, limitation, or appoint-

them, shall be sold or disposed of; which receipts shall respectively be good and sufficient discharges to the purchaser or purchasers thereof, or of any part thereof, and his, her, or their heirs, executors, and administrators, for so much of his, her, or their purchase money as in any such receipt or receipts shall be acknowledged or expressed to be received, and such purchaser or purchasers, and his, her, and their heirs, executors, or administrators, shall not afterwards be answerable or accountable for any loss, misapplication, or non-application of the same, or any part thereof. AND it is hereby agreed and declared, that the said (*trustees*), or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, and their and his assigns, shall stand possessed of and interested in the monies arising by any such sale or sales as aforesaid, IN TRUST for all and every the child and children of the said (*intended husband*) on the said (*intended wife*) his intended wife to be begotten, equally to be divided between or amongst them, if more than one, share and share alike; and in case there shall be but one such child, then IN TRUST for such one or only child, for his, her, or their portion or portions, and to be paid and payable to such children or child in the manner following, that is to say, the part or share, or parts or shares of such of them as shall be a son or sons, at his or their age or respective ages of twenty-one years; and the part or share, or parts or shares of such of them as shall be a daughter or daughters, at her or their age or respective ages of twenty-one years, or day or days of marriage, whichever shall first happen. PROVIDED ALWAYS, that if any child or children, being a son or sons, shall depart this life under the age of twenty-one years, [and without lawful issue,] or being a daughter or daughters, shall depart this life under that age and unmarried, then the part or share, and parts or shares of him, her, or them so dying,

ment, and in case any such shall be made, then when and as the estates and interests thereby di-

SETTLE-
MENTS.

MARRIAGE.

*Settlement of
Freeholds.
(Concise Form.)*

shall go and accrue to the survivors or survivor of such children or only surviving child, to be equally divided between or amongst them all, if more than one, share and share alike, and to be payable and paid at such days and times, and go and belong to such surviving children or child, in such and the like manner as his, her, or their original share or shares; and in case of the death of any more or other of the said children, before such accruing or surviving part or share, or parts or shares shall become payable as aforesaid, then such accruing part or share, or parts or shares, shall be subject and liable to such and the like accruer to the survivors or survivor of such children or only surviving child, as is hereinbefore declared relative to his, her, or their original part of share, or parts or shares, [*the issue of children to have parents' share, as ante, p. 340*].

AND ALSO that it shall be lawful for the said, (*trustees*) and the survivors and survivor of them, and the executors and administrators of the survivor, and their and his assigns, in the mean time and until the said portion and portions shall become payable, to lay out and invest the money arising from such sale or sales as aforesaid, at the discretion of the said trustees or trustee for the time being, in the public stocks or funds of the United Kingdom, or on government or real securities, in their or his own name or names, and from time to time to alter and transpose such securities or funds, and the said trustees or trustee shall stand and be possessed of such stocks, funds, and securities, upon such and the like trusts, for such and the like intents and purposes, and under and subject to such and the like powers, provisos, declarations, and agreements as are hereinbefore mentioned, expressed, and declared, of and concerning the monies arising by such sale or sales of the hereditaments and premises hereby granted and released, or intended so

Power to invest
purchase-money
on securities in
the mean time.

SETTLEMENTS.

MARRIAGE.

*Settlement of
Frieholds.
(Concise Form.)*

To the children
equally.

Power of ap-
plying interest
of portions for
maintenance
and education.

And part of
portions for ad-
vancement in
life.

rected, limited, and appointed, shall respectively
end and determine, To THE USE of all and every

to be as aforesaid. AND UPON THIS FURTHER TRUST, that they the said (*trustees*), the survivors or survivor of them, and the executors or administrators of such survivor, and their or his assigns, shall and do in the mean time, until the share or shares of such child or children shall become payable as aforesaid, pay and apply all or so much and such part of the interest, dividends, and annual produce of the monies arising from such sale or sales as aforesaid, for and towards the maintenance and education of such child or children, in such proportions as they the said trustees or trustee shall in their or his discretion think proper, either by payment of the same to the said (*husband*), if living, to be by him applied, at his discretion, for that purpose, without being liable to render any account in respect thereof, or otherwise as such trustees or trustee shall deem expedient; and do and shall permit and suffer the surplus or residue, if any, of the interests, dividends, and annual produce of the share or shares of such child or children respectively, to accumulate for the benefit of such person or persons as for the time being shall be entitled thereto under or by virtue of these presents. PROVIDED ALSO, and it is hereby agreed and declared, that it shall and may be lawful for the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of the survivor, and their and his assigns, to pay any part or parts of the share or shares of any such child or children as aforesaid, for the putting or placing him, her, or them, to or in any trade, business, profession, or employment, or otherwise for his, her, or their preferment or advancement in the world, notwithstanding he, she, or they shall not then have attained his, her, or their respective ages of twenty-one years, being a son or sons at that age, or marriage of any daughter or

the child and children, whether male or female, of the said (*intended husband*) on the body of the said (*intended wife*) his intended wife, to be begotten, to be equally divided between and amongst them, if more than one, share and share alike, as tenants in common, and not as joint-tenants, and of the several and respective heirs of all and every such child and children; and if there shall be but one such child, then To THE USE of such only child and his or her heirs, [*or if the limitation be in tail*, say, and of the heirs of the body and respective bodies of all and every such child and children issuing, and on the death and failure of issue of any one or more of the same

SETTLEMENTS.

MARRIAGE.

Settlement of
Freeholds.
(Concise Form.)

daughters. PROVIDED ALWAYS, and it is hereby agreed and declared by and between the said parties to these presents, that in case there shall be no child of the said (*intended husband*) by the said (*intended wife*), or there being such, if every son shall depart this life under the age of twenty-one years, and every daughter shall depart this life under the age of twenty-one years and unmarried, then they the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, and their and his assigns, shall stand and be possessed as well of such part of the said hereditaments and premises as shall not have been sold or disposed of, as also of the monies arising by such sale or sales, if any, as aforesaid; and the then accumulated interest thereof, if any, To THE USE of, or IN TRUST for, the said (*intended husband*) his heirs, executors, administrators, and assigns, according to the natures and qualities of the property respectively, and to, for, or upon no other use, trust, intent, or purpose whatsoever."

Default of children, in trust for husband.

SETTLEMENTS.**MARRIAGE.****Settlement of
Freeholds.
(Concise Form.)**

To the use of
intended hus-
band in fee.

children, as well the equal share or shares of him, her, or them so dying, and of whom there shall be a failure of issue as aforesaid, as also all such share or shares as shall accrue to him, her, or them, or his, her, or their issue, on the death and failure of issue of any others or other of the said children, shall go and remain to and to the use of the survivors and survivor, and others and other of them, to take as tenants in common, and of the heirs of the body and respective bodies of such survivors or survivor, or others or other of them, and in default of such issue, To THE USE, &c. (*as may be required*);] and in default of such issue, To THE USE (1) of him the said (*intended husband*) his

To such uses
as husband and
wife shall ap-
point.

(1) If it be intended that the ultimate limitation after failure of issue shall be to such uses as the husband or wife, according to whose estate it originally was, shall appoint, see *ante*, No. II. p. 317, n. (1).

Moiety to use
of husband.

On the failure of issue of the marriage, the settled premises are sometimes limited to the husband and wife in equal moieties, or the husband's estates to him, and the wife's to her, as,

“AND in default of such issue, then as to one undivided moiety or half part of the messuages, lands, tenements, and hereditaments, the whole into two equal moieties or half parts being considered as divided [*or* and as to the hereditaments and premises hereinbefore mentioned to be situated at ,] To THE USE of the said (*intended husband*) his heirs and assigns for ever; and as to the other undivided moiety or half part, the whole into two equal moieties or half parts being considered as divided as aforesaid, [*or* and as to the said hereditaments and premises hereinbefore mentioned to be situated at ,] To THE USE of her the said (*intended wife*) her heirs and assigns for ever.”

heirs and assigns for ever (1). **PROVIDED ALWAYS,** and it is hereby declared and agreed by and between the said parties hereto, to be the true intent and meaning of them and of these presents, that it shall be lawful for the said (*intended husband*) during his life, and for the said (*intended wife*) after his decease, during her life, in case she shall survive him, and after the decease of both of them the said (*intended husband*) and (*intended wife*) for the said (*trustees*) or the survivor of them, or the heirs, {executors, or administrators} of such survivor, or their or his assigns, during the minority of such person or persons as for the time being shall be entitled in possession to the hereditaments hereby granted and released or otherwise assured, by virtue of the limitations hereinbefore contained, and they and each of them are accordingly hereby authorised and empowered by indenture or indentures in writing, under his, her, or their hand or respective hands, or the hand or hands of any attorney or attornies by him or them lawfully authorised in that behalf, to be by him, her, or them, sealed and delivered

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Power to grant leases.

(1) If the husband took the estate to himself and a trustee to prevent dower, add here a covenant by such trustee that he has done no act to incumber; for the form of such a covenant, see *ante*, No. II. p. 377, n. (1).

Husband and trustee.

If part of the premises agreed to be settled be copyhold, add here a covenant to surrender them, for the form of which see *ante*, p. 412, rider (E).

Copyholds.

Powers for maintenance, &c. out of the rents and profits may be added, as *ante*, p. 344.

Maintenance, &c.

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in the presence of and attested by two or more credible witnesses, whether referring or not referring to this present power to grant, demise, or lease, or limit or appoint by way of grant, demise, or lease, all and every or any of the same messuages, or tenements and premises, or any part or parcel thereof, to any person or persons for one, two, or three life or lives in being, or for any term or number of years determinable with or upon one, two, or three life or lives in being, or for any term or number of years absolutely not exceeding twenty-one years from the making thereof respectively, to take effect in possession at the time of or within three months next after the making thereof at the farthest, and not in reversion or by way of future interest, otherwise than as aforesaid, nor concurrently with or during the continuance of any lease or term in being, so that upon every such lease, limitation, or appointment, there be reserved and made payable half yearly or oftener, during the continuance thereof, to be incident to and go along with the reversion expectant on the determination of the same term thereby to be granted, the best and most approved rent or rents which in the opinion of the person or persons hereby empowered to grant or make such leases or appointments can at that time be obtained or reasonably expected for the same, without taking any fine or foregift, or any other matter or thing in the nature or in lieu of any fine or foregift, exceeding the sum of 10s. (other than by way of advance of rent upon the sur-

render of any present lease in being, for or in respect of the making or granting thereof; and so that every such grant, demise, or lease, or limitation or appointment by way of grant, demise, or lease, shall be so framed as that the lessee or lessees therein named, his, her, or their executors, administrators, or assigns, be not by any clause or words therein contained, or by any implication or inference to be deduced therefrom, in anywise authorised or empowered to do or commit waste, or be freed from impeachment of or exempted from punishment for committing waste, except only for or by pulling down old houses or buildings for the purpose of re-building or repairing the same with the consent of the landlord or landlords thereof, and so that in every such grant, demise, or lease, or limitation or appointment by way of grant, demise, or lease, there be contained a covenant by the tenant or lessee thereof, for payment of the rent thereby to be reserved, and a clause or power in the nature of a condition of re-entry, in case the rent or rents thereby to be reserved be behind or unpaid by the space of twenty-one days next after the same shall become due and payable, together with all usual covenants for farming and managing the lands to be thereby demised according to the custom of the county where the same may be (1), and so

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(1) If part of the premises be copyhold, see *ante*, No. II. Copyholds. p. 352, n. (3).

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Powers of sale, and exchange.

that the person or persons to whom such grant, demise, or lease, or limitation or appointment by way of grant, demise, or lease, shall be made, do seal and execute such lease or leases, limitation or appointment, or a counterpart or counterparts thereof (1). PROVIDED ALWAYS, and it is hereby further declared and agreed by and between the said parties to these presents, according to their respective estates and interests, that notwithstanding any of the uses, trusts, or limitations hereinbefore declared, subject only and without prejudice to any subsisting estates or interests for the time being, created in exercise of or pursuant

Building leases.	(1) If it be wished that a power of granting building leases should be inserted, the form of such a power will be found, <i>ante</i> , p. 423, rider (Ff).
Mining leases.	If the lands be situated in a mining county, and a power to grant mining leases be wished, the form of such a power will be found, <i>ante</i> , p. 426, rider (G).
Partition.	If the settler be not entitled to the entirety of the settled estates, add here a power for the trustees to make partition of them, for the form of which, see <i>ante</i> , p. 428, rider (H).
Division of common fields.	If part of the settled premises consist of commonable lands, there may here be inserted a power for the trustees to divide them, for the form of which, see <i>ante</i> , p. 431, rider (I).
Enfranchisement of copyholds.	If the premises or part of them consist of copyhold lands, of which the settler is lord of the manor, a power may be given to the trustees to enfranchise them, for the form of which, see <i>ante</i> , p. 433, rider (K).
Power of charging.	If the husband and wife are to have given to them a power to charge a sum of money upon the settled estates for their own benefit, such power may be inserted here, for the form of which, see <i>ante</i> , p. 435, rider (L).
Power of jointuring future wife.	If the husband be to have a power of jointuring a future wife, see <i>ante</i> , No. II. p. 359, note.

to the power of leasing hereinbefore contained, it shall be lawful for the said (*trustees*) and the survivor of them, and the heirs, [executors or administrators] of such survivor, and their or his assigns, or other the trustees or trustee for the time being, under the trusts of these presents for preserving contingent remainders, at any time or times during the life of the said (*intended husband*), with the consent of the said (*intended husband*) and (*intended wife*) his intended wife, during their joint lives, or of the survivor of them, after the decease of either of them, during his or her life, (such consent to be testified in writing under the hands and seals of the said (*intended husband*) and (*intended wife*) or the hand and seal of the survivor of them, and to be attested by two or more credible witnesses), and in case of and from and after the decease of the survivor of them, and the person or persons who shall be then next presumptively entitled to the aforesaid messuages, lands, and hereditaments, under or by virtue of the limitations hereinbefore contained, shall be above the age of sixteen years, then with the consent of the person or persons so presumptively entitled, to be testified in the same manner; but in case such person or persons shall be under that age, then of the sole and only proper authority of them the said trustees or trustee last aforesaid, either personally and by themselves or himself, or by their or his attorney or attornies lawfully authorised in that behalf, to sell and dispose of, and

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Purchasers, &c.
not liable to see
to the applica-
tion of purchase-
money.

limit, appoint, and convey all or any of the same messuages, lands, and hereditaments, and the fee-simple and inheritance thereof, to any person or persons whomsoever, whether such person or persons be tenant or tenants for life of the same premises or otherwise, either together or in parcels, and either by auction or public sale, or by private contract or agreement, for such price or prices in money or other equivalent, as to them the said trustees or trustee shall seem reasonable, or to limit, appoint, and convey in exchange the said lands, tenements, hereditaments, and premises, or any part or parcel thereof, for or in lieu of any other lands, tenements, or hereditaments, either of freehold or copyhold tenure, of equal value in the judgment or opinion of the said trustees or trustee; and also to make sale and dispose of or convey in exchange, all or any of the lands and hereditaments so to be purchased or taken in exchange; with full power and authority, upon payment of the money arising by sale of or given in exchange with all or any part or parts of the said premises, to sign and give proper receipts for the same; and it is hereby expressly agreed and declared, that the receipt and receipts of them the said trustees or trustee, or of such one or more of them who shall be the acting trustees or trustee for the time being, under or by virtue of these presents, shall be a sufficient discharge and sufficient discharges, at all times, and from time to time, to any purchaser or purchasers, or other

person or persons, for the money therein acknowledged or expressed to be received, and such person or persons, his, her, or their respective heirs, executors, administrators, or assigns, shall not afterwards be required or liable to see to the application of, or answerable for the loss, misapplication, or non-application of the same, or any part thereof, nor be obliged or required to see that the same, or any part thereof, be laid out or invested in or upon any purchase or securities in the mean time, in pursuance of the provisos or declarations hereinafter declared concerning the same; and that no person or persons who shall take any of the said lands or hereditaments in exchange for other lands or hereditaments, shall be obliged to see that the lands or hereditaments by them or him given or conveyed in lieu thereof, be conveyed or settled to, for, or upon the uses, trusts, intents, or purposes hereinafter directed concerning the same; and further, that when any of the said premises shall be sold for a valuable consideration in money, and a proper receipt shall be signed and given for the purchase-money as aforesaid, and also when any of the said premises shall be disposed of, or conveyed in exchange for, or in lieu of such other lands and hereditaments as aforesaid, and the fee-simple and inheritance of such last mentioned lands, tenements, and hereditaments, shall be well vested in them the aforesaid trustees or trustee, and their or his heirs, all and every the hereditaments and

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premises which shall be so sold and conveyed, or exchanged, shall be and remain from thenceforth for ever freed and absolutely discharged, of and from all and every the uses, trusts, estates, limitations, powers, provisos, and agreements, in and by these presents limited, expressed, and declared concerning the same; and then and from thenceforth these presents and the grant and release hereinbefore contained, shall be and enure as to the same hereditaments and premises to the only use and behoof of such purchaser or purchasers respectively, or person or persons to whom the same respectively shall be conveyed in exchange, and of his and their respective heirs and assigns for ever, or otherwise as he, she, or they shall or may, under his, her, or their hands and seals, direct or appoint; subject only to any subsisting lease or leases which shall have been made pursuant to the power hereinbefore contained in that behalf, and which shall be then subsisting.

Power of revocation for effecting such sale, &c.

AND for the purpose of effecting such exchanges, sales, or dispositions respectively, it is hereby declared and agreed, that it shall be lawful for them the said (*trustees*) or the survivor of them, or the heirs, executors, or administrators of such survivor, or their or his assigns, or other the trustees or trustee for the time being, under or by virtue of these presents for preserving contingent remainders, after any such sale, exchange, or other disposition shall be so made, by any deed or deeds, writing or writings, to be by them or

him duly executed in the presence of and attested by two or more credible witnesses, to revoke, annul, and make void all and singular the uses, limitations, and trusts hereby limited and created of and concerning the messuages, lands, and hereditaments which shall be sold or exchanged, and by the same or any other such deed or deeds, writing or writings, as aforesaid, to limit, declare, direct, or appoint any new or other use or uses, estate or estates, which shall be thought necessary or expedient for the completing or perfecting such sales, exchanges, and dispositions respectively, and for conveying the same premises to the use of the person or persons purchasing or taking the same in exchange, and of his, their, or her heirs, or to and upon such other use or uses, and for such other estate or interest, or estates or interests as such person or persons respectively shall direct or appoint; and also that upon any such exchange as aforesaid, it shall be lawful for the said trustees or trustee to receive or take, or give or pay any sum or sums of money by way of equality of exchange. PROVIDED ALWAYS nevertheless, and it is hereby further agreed, declared, and directed, that all and every the said monies which shall be received by or upon any such sale or sales, or for equality of exchange as aforesaid, shall from time to time with all convenient speed be laid out and invested (or the surplus thereof, after payment and satisfaction of all costs and expenses, attending the execution of the said trust, and of all charges

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Money to arise by sale to be laid out in the purchase of other lands, to be settled to the same uses.

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and incumbrances created upon the said hereditaments, by virtue of these presents) by them the said (*trustees*) or the survivor of them, his heirs, executors, or administrators, or their or his assigns, or other the acting trustees or trustee for the time being, under or by virtue of these presents, by and with the consent and approbation of the said (*intended husband*) and (*intended wife*) or the survivor of them, if living, but if not, then at and by the sole direction and authority of the said trustees or trustee for the time being, in whom the said trust monies shall be then vested, in the purchase or purchases of other lands, tenements, or hereditaments, to be situated in that part of the United Kingdom of Great Britain and Ireland called England, or in the principality of Wales, of a clear and indefeasible estate of inheritance in fee-simple in possession, or in copyhold lands or tenements of inheritance, (if any should be intermixed therewith), so that the same do not exceed one-fourth in value of the freehold hereditaments; and it is hereby further agreed and declared, that the messuages, lands, tenements, hereditaments, and premises so to be purchased or taken in exchange, shall forthwith be respectively settled, conveyed, and assured, so and in such manner as that the same may thenceforth be and remain to such and the same uses, upon such and the same trusts, and for such and the same intents and purposes, and charged and chargeable in the same manner, and with, under, and subject to the same powers of sale, and exchange, pro-

visos, limitations, declarations, and agreements as are hereinbefore expressed and declared, of and concerning the lands and hereditaments which shall be so exchanged, or sold respectively, or as nearly thereto as the differences of tenure, the death of the parties, and other contingencies will permit. AND it is hereby declared and agreed, that until the money arising by or from such exchange or sale, as aforesaid, shall be invested in a purchase or purchases in the manner hereinbefore directed, it shall be lawful for the said (*trustees*) and the survivor of them, and the heirs, executors, and administrators of such survivor, and their or his assigns, by and with the consent and approbation of the said (*intended husband*) and (*intended wife*) or of the survivor of them, testified as hereinbefore is mentioned, in case they or either of them shall be then living; and if both of them shall be then dead, then of or by the proper authority of them the said trustees or trustee, to place out such money at interest in the public funds, or on government or real securities in that part of the United Kingdom of Great Britain and Ireland called England, and also from time to time, with such consent and approbation and so testified as aforesaid, or of their or his own proper authority, as the case shall require, to alter, transpose, vary, and change such funds and securities when and so often as it shall be thought fit or expedient; and the dividends, interest, and annual proceeds from time to time to arise, by or in respect of the money so to be invested, or by

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And until purchase, the money to be invested on good securities.

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Persons paying
money to trustees not to be
liable to its application.

Covenant by
intended husband that he is
seised in fee.

Newly acquired
property to be
settled.

Covenant to
insure premises
against fire.

any alteration or transposition of such funds or securities as aforesaid, shall go and belong, and be payable and paid, to such person or persons, and be applicable and applied to and for such uses, intents, and purposes, and in such manner as the rents, issues, and profits of the lands and hereditaments hereby directed to be purchased therewith, would go and be payable or applicable, under or by virtue of the limitations hereinbefore contained, in case such purchase or purchases had been then actually made. AND it is hereby declared and agreed, that no person or persons who shall have any of the said monies in his or their hand or respective hands, or upon any securities given by him, her, or them, for the same, shall be in any respects obliged or required to see to the disposal or application thereof, or of any part thereof, or of the interests, dividends, or proceeds thereof, or of any part thereof after he, she, or they shall have paid the same to the said trustees or trustee, and taken their or his receipt or receipts for the same, nor be answerable or accountable for any mis-application or the non-application thereof, or of any part thereof (1). AND the said (*intended husband*) for himself, his heirs, executors,

(1) If it has been agreed, that any future property which may be acquired by the husband or wife shall be settled to the same uses, see No. II. p. 376, n. (1).

If the settled premises or any considerable part of them consist of houses, it will be proper to insert a stipulation for insurance against fire; for which see *ibid.* p. 421, rider (F).

and administrators, doth hereby covenant, declare, and agree with and to the said (*trustees*) their heirs and assigns, in the manner following, that is to say, that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned, suffered, or omitted by him the said (*intended husband*) or any of his ancestors (1), or any of his or their trustees to the contrary, (except as hereinbefore is excepted) he the said (*intended husband*) at the time of the sealing and delivery of these presents, is lawfully, rightfully, and absolutely seised (2) in his demesne as of fee in his own right and to his own use, of (3) all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or otherwise assured, or mentioned or intended so to be, and of every part and parcel thereof, both at law and in equity, as of or for a good, clear, perfect, absolute, and indefeasible

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(1) If the intended husband took otherwise than by descent, instead of "any of his ancestors," say, "or the said A. B.," or other person who last took as a purchaser.

(2) If the intended husband took the estate to himself and a trustee, say, Trustee to prevent dower.

"He the said (*intended husband*) at the time of the sealing and delivery of these presents, is the lawful, rightful, and sole beneficial owner and proprietor of all and singular the messuages," &c. *as above*, or *as ante*, p. 378, n. (2).

(3) If the settlement be of a moiety or other portion only of the estate, see No. II. p. 379, n. (1). Moiety, &c.

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that the person or persons to whom such grant, demise, or lease, or limitation or appointment by way of grant, demise, or lease, shall be made, do seal and execute such lease or leases, limitation or appointment, or a counterpart or counterparts thereof (1). PROVIDED ALWAYS, and it is hereby further declared and agreed by and between the said parties to these presents, according to their respective estates and interests, that notwithstanding any of the uses, trusts, or limitations hereinbefore declared, subject only and without prejudice to any subsisting estates or interests for the time being, created in exercise of or pursuant

Building leases.

(1) If it be wished that a power of granting building leases should be inserted, the form of such a power will be found, *ante*, p. 423, rider (Ff).

Mining leases.

If the lands be situated in a mining county, and a power to grant mining leases be wished, the form of such a power will be found, *ante*, p. 426, rider (G).

Partition.

If the settler be not entitled to the entirety of the settled estates, add here a power for the trustees to make partition of them, for the form of which, see *ante*, p. 428, rider (H).

**Division of
common fields.**

If part of the settled premises consist of commonable lands, there may here be inserted a power for the trustees to divide them, for the form of which, see *ante*, p. 431, rider (I).

**Enfranchise-
ment of copy-
holds.**

If the premises or part of them consist of copyhold lands, of which the settler is lord of the manor, a power may be given to the trustees to enfranchise them, for the form of which, see *ante*, p. 433, rider (K).

**Power of
charging.**

If the husband and wife are to have given to them a power to charge a sum of money upon the settled estates for their own benefit, such power may be inserted here, for the form of which, see *ante*, p. 435, rider (L).

**Power of join-
turing future
wife.**

If the husband be to have a power of jointuring a future wife, see *ante*, No. II. p. 359, note.

to the power of leasing hereinbefore contained, it shall be lawful for the said (*trustees*) and the survivor of them, and the heirs, [executors or administrators] of such survivor, and their or his assigns, or other the trustees or trustee for the time being, under the trusts of these presents for preserving contingent remainders, at any time or times during the life of the said (*intended husband*), with the consent of the said (*intended husband*) and (*intended wife*) his intended wife, during their joint lives, or of the survivor of them, after the decease of either of them, during his or her life, (such consent to be testified in writing under the hands and seals of the said (*intended husband*) and (*intended wife*) or the hand and seal of the survivor of them, and to be attested by two or more credible witnesses), and in case of and from and after the decease of the survivor of them, and the person or persons who shall be then next presumptively entitled to the aforesaid messuages, lands, and hereditaments, under or by virtue of the limitations hereinbefore contained, shall be above the age of sixteen years, then with the consent of the person or persons so presumptively entitled, to be testified in the same manner; but in case such person or persons shall be under that age, then of the sole and only proper authority of them the said trustees or trustee last aforesaid, either personally and by themselves or himself, or by their or his attorney or attornies lawfully authorised in that behalf, to sell and dispose of, and

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Purchasers, &c.
not liable to see
to the applica-
tion of purchase-
money.

limit, appoint, and convey all or any of the same messuages, lands, and hereditaments, and the fee-simple and inheritance thereof, to any person or persons whomsoever, whether such person or persons be tenant or tenants for life of the same premises or otherwise, either together or in parcels, and either by auction or public sale, or by private contract or agreement, for such price or prices in money or other equivalent, as to them the said trustees or trustee shall seem reasonable, or to limit, appoint, and convey in exchange the said lands, tenements, hereditaments, and premises, or any part or parcel thereof, for or in lieu of any other lands, tenements, or hereditaments, either of freehold or copyhold tenure, of equal value in the judgment or opinion of the said trustees or trustee; and also to make sale and dispose of or convey in exchange, all or any of the lands and hereditaments so to be purchased or taken in exchange; with full power and authority, upon payment of the money arising by sale of or given in exchange with all or any part or parts of the said premises, to sign and give proper receipts for the same; and it is hereby expressly agreed and declared, that the receipt and receipts of them the said trustees or trustee, or of such one or more of them who shall be the acting trustees or trustee for the time being, under or by virtue of these presents, shall be a sufficient discharge and sufficient discharges, at all times, and from time to time, to any purchaser or purchasers, or other

person or persons, for the money therein acknowledged or expressed to be received, and such person or persons, his, her, or their respective heirs, executors, administrators, or assigns, shall not afterwards be required or liable to see to the application of, or answerable for the loss, misapplication, or non-application of the same, or any part thereof, nor be obliged or required to see that the same, or any part thereof, be laid out or invested in or upon any purchase or securities in the mean time, in pursuance of the provisos or declarations hereinafter declared concerning the same; and that no person or persons who shall take any of the said lands or hereditaments in exchange for other lands or hereditaments, shall be obliged to see that the lands or hereditaments by them or him given or conveyed in lieu thereof, be conveyed or settled to, for, or upon the uses, trusts, intents, or purposes hereinafter directed concerning the same; and further, that when any of the said premises shall be sold for a valuable consideration in money, and a proper receipt shall be signed and given for the purchase-money as aforesaid, and also when any of the said premises shall be disposed of, or conveyed in exchange for, or in lieu of such other lands and hereditaments as aforesaid, and the fee-simple and inheritance of such last mentioned lands, tenements, and hereditaments, shall be well vested in them the aforesaid trustees or trustee, and their or his heirs, all and every the hereditaments and

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MENTS.**

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premises which shall be so sold and conveyed, or exchanged, shall be and remain from thenceforth for ever freed and absolutely discharged, of and from all and every the uses, trusts, estates, limitations, powers, provisos, and agreements, in and by these presents limited, expressed, and declared concerning the same; and then and from thenceforth these presents and the grant and release hereinbefore contained, shall be and enure as to the same hereditaments and premises to the only use and behoof of such purchaser or purchasers respectively, or person or persons to whom the same respectively shall be conveyed in exchange, and of his and their respective heirs and assigns for ever, or otherwise as he, she, or they shall or may, under his, her, or their hands and seals, direct or appoint; subject only to any subsisting lease or leases which shall have been made pursuant to the power hereinbefore contained in that behalf, and which shall be then subsisting.

Power of revocation for effecting such sale, &c.

AND for the purpose of effecting such exchanges, sales, or dispositions respectively, it is hereby declared and agreed, that it shall be lawful for them the said (*trustees*) or the survivor of them, or the heirs, executors, or administrators of such survivor, or their or his assigns, or other the trustees or trustee for the time being, under or by virtue of these presents for preserving contingent remainders, after any such sale, exchange, or other disposition shall be so made, by any deed or deeds, writing or writings, to be by them or

him duly executed in the presence of and attested by two or more credible witnesses, to revoke, annul, and make void all and singular the uses, limitations, and trusts hereby limited and created of and concerning the messuages, lands, and hereditaments which shall be sold or exchanged, and by the same or any other such deed or deeds, writing or writings, as aforesaid, to limit, declare, direct, or appoint any new or other use or uses, estate or estates, which shall be thought necessary or expedient for the completing or perfecting such sales, exchanges, and dispositions respectively, and for conveying the same premises to the use of the person or persons purchasing or taking the same in exchange, and of his, their, or her heirs, or to and upon such other use or uses, and for such other estate or interest, or estates or interests as such person or persons respectively shall direct or appoint; and also that upon any such exchange as aforesaid, it shall be lawful for the said trustees or trustee to receive or take, or give or pay any sum or sums of money by way of equality of exchange. PROVIDED ALWAYS nevertheless, and it is hereby further agreed, declared, and directed, that all and every the said monies which shall be received by or upon any such sale or sales, or for equality of exchange as aforesaid, shall from time to time with all convenient speed be laid out and invested (or the surplus thereof, after payment and satisfaction of all costs and expenses, attending the execution of the said trust, and of all charges

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Money to arise by sale to be laid out in the purchase of other lands, to be settled to the same uses.

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MENTS.****MARRIAGE.****Settlement of
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and incumbrances created upon the said hereditaments, by virtue of these presents) by them the said (*trustees*) or the survivor of them, his heirs, executors, or administrators, or their or his assigns, or other the acting trustees or trustee for the time being, under or by virtue of these presents, by and with the consent and approbation of the said (*intended husband*) and (*intended wife*) or the survivor of them, if living, but if not, then at and by the sole direction and authority of the said trustees or trustee for the time being, in whom the said trust monies shall be then vested, in the purchase or purchases of other lands, tenements, or hereditaments, to be situated in that part of the United Kingdom of Great Britain and Ireland called England, or in the principality of Wales, of a clear and indefeasible estate of inheritance in fee-simple in possession, or in copyhold lands or tenements of inheritance, (if any should be intermixed therewith), so that the same do not exceed one-fourth in value of the freehold hereditaments; and it is hereby further agreed and declared, that the messuages, lands, tenements, hereditaments, and premises so to be purchased or taken in exchange, shall forthwith be respectively settled, conveyed, and assured, so and in such manner as that the same may thenceforth be and remain to such and the same uses, upon such and the same trusts, and for such and the same intents and purposes, and charged and chargeable in the same manner, and with, under, and subject to the same powers of sale, and exchange, pro-

visos, limitations, declarations, and agreements as are hereinbefore expressed and declared, of and concerning the lands and hereditaments which shall be so exchanged, or sold respectively, or as nearly thereto as the differences of tenure, the death of the parties, and other contingencies will permit. AND it is hereby declared and agreed, that until the money arising by or from such exchange or sale, as aforesaid, shall be invested in a purchase or purchases in the manner hereinbefore directed, it shall be lawful for the said (*trustees*) and the survivor of them, and the heirs, executors, and administrators of such survivor, and their or his assigns, by and with the consent and approbation of the said (*intended husband*) and (*intended wife*) or of the survivor of them, testified as hereinbefore is mentioned, in case they or either of them shall be then living; and if both of them shall be then dead, then of or by the proper authority of them the said trustees or trustee, to place out such money at interest in the public funds, or on government or real securities in that part of the United Kingdom of Great Britain and Ireland called England, and also from time to time, with such consent and approbation and so testified as aforesaid, or of their or his own proper authority, as the case shall require, to alter, transpose, vary, and change such funds and securities when and so often as it shall be thought fit or expedient; and the dividends, interest, and annual proceeds from time to time to arise, by or in respect of the money so to be invested, or by

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And until purchase, the money to be invested on good securities.

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Persons paying
money to trustees not to be
liable to its application.

Covenant by
intended husband that he is
seised in fee.

any alteration or transposition of such funds or securities as aforesaid, shall go and belong, and be payable and paid, to such person or persons, and be applicable and applied to and for such uses, intents, and purposes, and in such manner as the rents, issues, and profits of the lands and hereditaments hereby directed to be purchased therewith, would go and be payable or applicable, under or by virtue of the limitations hereinbefore contained, in case such purchase or purchases had been then actually made. AND it is hereby declared and agreed, that no person or persons who shall have any of the said monies in his or their hand or respective hands, or upon any securities given by him, her, or them, for the same, shall be in any respects obliged or required to see to the disposal or application thereof, or of any part thereof, or of the interests, dividends, or proceeds thereof, or of any part thereof after he, she, or they shall have paid the same to the said trustees or trustee, and taken their or his receipt or receipts for the same, nor be answerable or accountable for any mis-application or the non-application thereof, or of any part thereof (1). AND the said (*intended husband*) for himself, his heirs, executors,

Newly acquired
property to be
settled.

Covenant to
insure premises
against fire.

(1) If it has been agreed, that any future property which may be acquired by the husband or wife shall be settled to the same uses, see No. II. p. 376, n. (1).

If the settled premises or any considerable part of them consist of houses, it will be proper to insert a stipulation for insurance against fire; for which see *ibid.* p. 421, rider (F).

and administrators, doth hereby covenant, declare, and agree with and to the said (*trustees*) their heirs and assigns, in the manner following, that is to say, that for and notwithstanding any act, deed, matter, or thing whatsoever, at any time heretofore made, done, executed, or knowingly occasioned, suffered, or omitted by him the said (*intended husband*) or any of his ancestors (1), or any of his or their trustees to the contrary, (except as hereinbefore is excepted) he the said (*intended husband*) at the time of the sealing and delivery of these presents, is lawfully, rightfully, and absolutely seised (2) in his demesne as of fee in his own right and to his own use, of (3) all and singular the messuages, lands, tenements, hereditaments, and premises hereinbefore granted and released, or otherwise assured, or mentioned or intended so to be, and of every part and parcel thereof, both at law and in equity, as of or for a good, clear, perfect, absolute, and indefeasible

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(1) If the intended husband took otherwise than by descent, instead of "any of his ancestors," say, "or the said A. B.," or other person who last took as a purchaser.

(2) If the intended husband took the estate to himself and a trustee, say, Trustee to prevent dower.

"He the said (*intended husband*) at the time of the sealing and delivery of these presents, is the lawful, rightful, and sole beneficial owner and proprietor of all and singular the messuages," &c. *as above*, or *as ante*, p. 378, n. (2).

(3) If the settlement be of a moiety or other portion only of the estate, see No. II. p. 379, n. (1). Moiety, &c.

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And will continue so seised until, &c.

estate of inheritance in fee-simple in possession (1) and in severalty (2), without any manner of trust, condition, power of revocation, or of limiting, directing, or declaring any new or other use or uses, or other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may alter, determine, revoke, abridge, qualify, charge, incumber, or prejudicially affect the same hereditaments and premises, or any of them, or any part thereof respectively, or defeat, determine, abridge, or vary the uses, trusts, estates, or interests hereby expressed, or intended to be granted, declared, or limited, of, in, or concerning the same respectively (3). [AND that he the said (*intended husband*) and his heirs shall and will continue so seised thereof as aforesaid, except only so far as such seisin is or may be effected by these presents, until the said hereditaments and

Remainder, &c.

(1) If the settlement be of a remainder or reversion, instead of "in possession," say,

"In remainder or reversion expectant as aforesaid."

Copyholds.

(2) If part of the estate be copyhold, see No. II. p. 379, n. (3).

Trustee to prevent dower.

(3) If the intended husband took the estate to himself and a trustee to prevent dower, add,

"And that he the said (*intended husband*) hath not at any time heretofore in any manner executed or otherwise exercised the power of appointment, direction, or limitation so reserved or given to him as aforesaid, of or concerning the premises or any part thereof, or any estate or interest therein."

premises shall (1) be fully and absolutely vested in the said (*trustees*) and their heirs, to, for, and upon the uses, trusts, ends, intents, and purposes aforesaid.] AND also, that for and notwithstanding any such act, deed, matter, or thing as aforesaid, except as aforesaid, he the said (*intended husband*) (2) now hath in himself and in his own right, full power and lawful and absolute title and authority, to grant, bargain, sell, release, and confirm, all and singular the same (3) messuages, lands, tenements, hereditaments, and premises (4), and the possession, reversion, and inheritance thereof, unto the said (*trustees*) and their heirs, to the uses, upon the trusts, and to and for the ends, intents, and purposes, and with, under, and subject to the powers, provisos, declarations, and agreements hereinbefore limited, declared, or expressed, of or concerning the same respectively. AND further, that all and singular the said mes-

SETTLEMENTS.

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Settlement of
Freeholds.
(Concise Form.)And hath right
to convey.

(1) If the intended husband be tenant in tail of the lands agreed to be settled, see No. II. p. 381, n. (1). Tenant in tail.

(2) If the intended husband took the estate to himself and a trustee to prevent dower, say, Trustee to prevent dower.

“ They the said (*intended husband*) and (*trustee to prevent dower*) now have in themselves, or one of them hath in himself, full power,” &c. *as above*.

(3) If the settlement be of a moiety or other portion only of the estate, see No. II. p. 381, n. (3). Moiety, &c.

If of a remainder or reversion, see *ibid*.

Remainder, &c.

(4) If part of the estate be copyhold, see No. II. p. 382, n. (1). Copyholds.

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Freeholds.
(Concise Form.)

That the premises shall remain to the uses aforesaid.

Free from incumbrances.

suages or tenements, lands, hereditaments, and premises, with their and every of their respective rights, members, and appurtenances, shall (1) from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and for the ends, intents, and purposes hereinbefore declared or expressed concerning the same, or such of them as shall from time to time be subsisting^a and capable of taking effect; and shall and lawfully may be peaceably and quietly holden and enjoyed accordingly, without any lawful action, suit, hindrance, molestation, disturbance, or interruption whatsoever, of, from, or by him the said (*intended husband*) or his heirs, or any person or persons whomsoever, now or hereafter lawfully or rightfully claiming or possessing any estate, right, title, charge, or interest at law or in equity, in, to, out of, upon, or respecting the said premises or any of them, through, under, or in trust for him, them, or any of them, or any of his ancestors. AND that free and clear, and clearly and absolutely discharged and exonerated, or otherwise by and at the expense of the said (*intended husband*) his heirs, executors, or administrators, effectually protected, saved harmless, and indemnified from and against all former and other [gifts, grants, bargains and sales, contracts, releases, leases, devises, wills, conveyances, and assurances,

Tenant in tail.

(1) If the intended husband be tenant in tail of the premises agreed to be settled, see No. II. p. 382, n. (2).

and all manner of uses, trusts, entails, limitations, settlements, remainders or reversions in the crown or elsewhere, conditions, mortgages, judgments, decrees, statutes, recognizances, extents, executions, elegits, sequestrations, debts of record, debts due to the king, or any of his predecessors, legacies, portions, annuities, rents, estate right and title of or to dower, forfeitures, entries, cause and causes of forfeiture and of entry, and all and singular other] estates, rights, titles, interests, charges and incumbrances whatsoever, which at any time or times heretofore have been, or which at any time or times hereafter shall or may be made, created, executed, committed, or knowingly occasioned or suffered by him the said (*intended husband*) or any of his ancestors (1), or any person or persons now or hereafter lawfully or rightfully claiming or possessing any estate, right, title, or interest, at law or in equity, from, through, under, or in trust for him, them, or any of them, or by, through, or with his, their, or any or either of their procurement, consent, or privity, or acts, means, or default, save only and except such person or persons who may at any time be entitled to the said hereditaments and premises, or any of them, under or by virtue of any of the limitations in these presents contained, and his and their acts

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(1) If the intended husband took the estate otherwise than by descent, see *ante*, p. 471, n. (1).

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Settlement of
Freeholds.
(Concise Form.)And for further
assurance.

and deeds](1). AND further, that he the said (*intended husband*) and his heirs, and all and every person and persons now or at any time hereafter, lawfully, equitably, or rightfully claiming or possessing any estate, right, title, or interest, at law or in equity, in, to, out of, upon, or respecting the (2) hereditaments and premises hereby granted and released (3), or mentioned or intended so to be, or any of them, or any part thereof, from, through, under, or in trust for him, them, or any or either of them, or any of the ancestors of the said (*intended husband*) (4), other than any person or persons claiming, or entitled under or by virtue of any leases, or agreements for leases now subsisting, or hereafter to be granted in pursuance of the powers herein contained, so far as respects their several estates and interests under or by virtue of the same, shall and will from time to time, and at all times after the solemnization of the said intended marriage, at the request of

Copyholds.

(1) If part of the estate be copyhold, add,

“And the customary fines, heriots, rents, and services respectively aforesaid, to become due or payable for or in respect of the said premises, or any of them.”

Moiety, &c.

(2) If the settlement be of a moiety or other portion only of the estate, see *ante*, No. II. p. 385, n. (2).

Remainder, &c.

If of a remainder or reversion, see *ibid*.

Copyholds.

(3) If part of the premises be copyhold, add,

“And covenanted to be surrendered respectively.”

(4) If the intended husband took otherwise than by descent, see *ante*, p. 471, n. (1).

the said (*trustees*) or of the survivor of them, or of the heirs, executors, or administrators of the survivor, or their or his assigns, or other person or persons for the time being entitled to the said hereditaments, or the rents, issues, or profits thereof, or any part thereof, under or by virtue of these presents, but at the costs and charges of him the said (*intended husband*) his executors or administrators, make, do, acknowledge, levy, suffer, execute, and perfect, [or cause and procure to be made, done, acknowledged, levied, suffered, executed, and perfected, with all due expedition] all and every such further and other lawful and reasonable act and acts, deeds, conveyances, and assurances, (with usual and other proper covenants) and other matters and things whatsoever, [be the same by fine or fines, with or without proclamations, common recovery or common recoveries, deed or deeds enrolled or not enrolled, feoffment, release, confirmation, declaration or limitation, of or to any use or uses, or other assurance or assurances, of record or not of record] for the further, better, more perfectly, fully and absolutely, or satisfactorily granting, releasing, conveying, confirming, and assuring the same hereditaments and premises, [and every or any part or parcel thereof, and the possession, reversion, and inheritance of the same, with their and every of their rights, members, and appurtenances,] unto the said (*trustees*) or other the trustees or trustee for the time being for the preservation of contingent remainders, and their heirs, for the uses,

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MENTS.****MARRIAGE.*****Settlement of
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and for himself and themselves respectively, and also to allow and pay to his and their co-trustees and co-trustee, or any or either of them, all and every the costs, charges, and reasonable disbursements and expenses, which they, or any or either of them, shall or may, from time to time, or at any time or times, pay, sustain, expend, or be put unto, in, for, or in respect of all or any rents, quit-rents, taxes, fines, heriots, repairs, and outgoings, of, for, or concerning the said hereditaments and premises, salaries, wages, and allowances to bailiffs, stewards, and others, fees to counsel for advice, or otherwise howsoever, in or about the execution of the aforesaid trusts, or any of them, or in any wise relating thereto; and also to settle, adjust, pay, and allow the accounts and disbursements of any trustee or trustees who shall depart this life, or be desirous of being discharged of and from the aforesaid trusts, or who shall be about to reside beyond the seas, or shall neglect or refuse, or become incapable to act in the said trusts, and in whose place or stead, a new trustee or trustees shall have been appointed; and also to receive and give discharges for any money which shall appear to be then due from such trustees or trustee, without he or they or other person or persons paying the same, being liable to see to the application thereof, or being answerable or accountable for the loss, mis-application, or non-application thereof; and it is hereby declared and agreed, that the allowance of which said accounts, disbursements, costs, and

expenses, shall be reckoned and settled fully and liberally, as between solicitor and client, and not as between party and party, in any cause, suit, or legal proceeding (1). IN WITNESS, &c.

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(Concise Form.)

(1) If the provision made for the wife by the settlement, be intended to be in lieu of all subsequent property which may accrue to her, it should be expressly so declared, as it will otherwise be generally considered to be a purchase of her present fortune only; see *Druce v. Denison*, 6 Ves. jun. 385, also 9 *ib.* 18.

Settlement a
purchase of
wife's present
fortune only.

If it be agreed that the settlement should be in satisfaction of the wife's title to dower, say,

Settlement to
be in bar of
dower.

“AND it is hereby further declared and agreed by and between all the said parties to these presents, that the provision hereby made and intended for the said (*intended wife*) to take effect upon the event of her surviving the said (*intended husband*) her said intended husband, shall be, and she doth hereby accept the same in lieu, bar, and full satisfaction of and for all dower and thirds at the common law, or by custom, or otherwise, which she the said (*intended wife*) can or may, or otherwise might have claim, or be entitled to, of, in, to, or out of all or any of the messuages, lands, tenements, and hereditaments whatsoever, whereof he the said (*intended husband*) now is, or shall, or may, during the said intended coverture, be seised for any estate of inheritance in possession, or for any dowable estate or interest whatsoever; and that in case the said intended marriage shall take effect, she the said (*intended wife*) shall and will make, do, acknowledge, suffer, execute, and join in all such acts, deeds, conveyances, and assurances as by the counsel of the said (*intended husband*) his heirs or assigns, shall be advised and required, for releasing, conveying, and surrendering all her right and title of dower, thirds, and freebench, in and to all the estates of the said (*intended husband*) of which he shall be so seised as last aforesaid, to the intent

SETTLEMENTS.

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Freeholds.
(Concise Form.)Settlement not
to prejudice
wife's dower,
&c.

that all such right and title may become extinguished in the inheritance of the said estates."

If it be intended that the provision for the wife shall not affect her dower, instead of the preceding variation, say,

"PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties to these presents, that nothing herein contained shall in any manner defeat, prejudice, or affect the estate, right, or title to dower or free bench, which the said (*intended wife*) shall or may, at any time after the said intended coverture, have or be entitled to, or if these presents had not been made, would or might have had or become entitled to, in, to, or out of the messuages, lands, tenements, or other hereditaments which the said (*intended husband*) now is or hereafter may be seised of an estate of inheritance, or defeat or prejudice her estate, right, title, or interest of, or in his personal estate, under or by virtue of the statute of distributions, or any rules of the common law or custom, or otherwise howsoever."

Further assurance.

A covenant may also be added for further assurance by the parties.

"AND LASTLY, the said (*intended husband*) and (*intended wife*) for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, do, and each of them doth, hereby covenant, declare, and agree with and to the said (*trustees*) their heirs, executors, administrators, and assigns, that they the said (*intended husband*) and (*intended wife*) respectively, and their respective heirs, executors, and administrators, shall and will from time to time, and at all times hereafter, at their, his, or her own proper costs and charges, upon every reasonable request of the said (*trustees*) or of the survivors or survivor of them, his heirs, executors, or administrators, make, do, and execute, or cause and procure to be made, done, and executed all and every such acts, deeds, matters, and things whatsoever as shall be necessary for the more effectually conveying, assigning, and assuring to and vesting in them

the said (*trustees*) their heirs, executors, administrators, and assigns, the said messuages, &c. principal and other sums, securities, monies, funds, chattels, and premises hereinbefore expressed to be hereby released and assigned, or otherwise assured respectively, and for enabling them, and every, or any of them, to collect, get in, and receive the same premises respectively, and for otherwise promoting and facilitating the execution and performance of all and singular the trusts aforesaid, as by the said (*trustees*) or the survivors or survivor of them, his heirs, executors, administrators, or assigns, or their, his, or any of their counsel learned in the law, shall be reasonably and lawfully advised and required."

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Freeholds.
(Concise Form.)

Rectory for
lives of no-
minees.

Variations, &c. where the Property to be settled is a Rectory or Prebend. See ante, p. 443.

“HE the said (*intended husband*) HATH granted and released, and by these presents DOTH grant and release unto the said (*trustees*) and their heirs, ALL and singular the said rectory, prebend, or parsonage and dwelling-house, glebe, and other lands, tithes, hereditaments and premises, which by the said in part recited indenture of demise or lease of the day of , were granted and demised to the said (*intended husband*) his heirs and assigns, together with all houses, out-houses, buildings, gardens, oblations, obventions, offerings, fruits, rights, privileges, emoluments, profits, advantages, and appurtenances whatsoever, to the same belonging or in anywise appertaining, or therewith holden, used, occupied, or enjoyed, or deemed or taken as part, parcel, or member thereof, and the reversion and reversions, remainder and remainders, &c. AND all the estate, &c. (*as ante*). TO HAVE AND TO HOLD the rectory or prebend, parsonage and dwelling-house, tithes, lands, and hereditaments hereby granted and released, or otherwise assured, or intended so to be, and every part thereof, with their respective appurtenances, unto them the said (*trustees*) their heirs and assigns, for and during the term of the natural lives of the said (*nominees*) and other the *cestui que vies* (if any) named in the said indenture of demise or lease, and for and during the life or lives of all and every other person or persons who shall or may be named as a *cestui que vie*, or *cestui que vies*, in any future lease or leases to be made or granted of the same premises, or any part thereof, by virtue of the said indenture; BUT nevertheless upon the several trusts, for the several intents and purposes, and under and subject to the several powers, provisos, limitations, and agreements hereinafter limited, declared, or expressed concerning the same, (that is to say) IN TRUST for the said (*intended husband*) until the said intended marriage shall

take effect. AND from and after the solemnization thereof, then upon trust that they the said (*trustees*) and the survivor of them, and the heirs of such survivor, or their or his assigns, do and shall, from time to time, by and out of the rents, issues, and profits of the said premises, pay the rent and perform the covenants, clauses, and agreements, in or by the said demise or lease, or any future demise or lease, or demises or leases of the same premises, reserved or contained, or to be reserved or contained, and which, on the part of the lessee or lessees, is or ought to be paid, observed, or performed. AND also by the ways and means aforesaid, or by any other lawful ways and means whatsoever, levy and raise such sum or sums of money as shall be necessary for paying, satisfying, and discharging the fines payable on the renewal of any demise or lease, or demises or leases of the same premises, or any part thereof, and all costs, charges, and expenses incident to, or which shall be occasioned by such renewal or renewals, or in relation thereto, and subject to the said trusts and purposes, IN TRUST for the said (*intended husband*) and his assigns, during the term of his natural life, and from and after the decease of the said (*intended husband*), then, &c. (*see ante*, p. 449), and subject thereto IN TRUST for the first son of the body of the said (*intended wife*) by the said (*intended husband*) to be begotten, and the heirs male of the body of such son lawfully issuing, (*or as may be agreed—and see ante*, p. 451, *et seq.*); and for default of such issue, IN TRUST for the second, &c. (*as in other cases, see ante*, p. 307, *et seq.*); and in default of such issue, IN TRUST for all and every the daughter and daughters of the said (*intended wife*) by the said (*intended husband*) to be begotten, &c. (*as in other cases; see ante*, p. 312, *et seq.*); and for default of such issue, IN TRUST for the right heirs of the said (*intended husband*). PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the said (*trustees*) and the survivor of them, and the heirs of such survivor, and they and he are and is hereby authorised and required, at any time or times after the solemnization of the said intended marriage, to make any surrender or surrenders of the said premises, and also of

SETTLE-
MENTS.

MARRIAGE.

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SETTLEMENTS.**MARRIAGE.***Settlement of
Freeholds.
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Power of re-
vocation, for
giving seisin of
trust estates to
new trustees.

of the trustees or trustee hereby appointed, in or to whose place such new trustees or trustee respectively shall be appointed or succeed; And for that purpose it shall be lawful for the person or persons by whom any such other or new trustees or trustee shall be so named or appointed as aforesaid, by any deed or deeds, or other instrument or instruments in writing, to be sealed and delivered by him or them in the presence of and attested by two or more credible witnesses, to revoke and make void all or any of the uses, estates, or trusts hereinbefore created, limited, or declared of or concerning the lands and hereditaments hereinbefore granted and released, or otherwise assured, or which shall hereafter be substituted in the room or stead thereof, by virtue of any of the powers hereinbefore contained, or any of them, or any part thereof, or such and so many of the same as are or shall be of a freehold nature, or otherwise render such revocation necessary or expedient; And by the same or any other deed or deeds, or instrument or instruments in writing, to be sealed and delivered, and attested as last aforesaid, to create, limit, or declare any such other or new use or uses, estate or estates, trust or trusts, of or concerning the said lands and hereditaments, or any part thereof as shall be deemed necessary or expedient, to or for the end and purpose of vesting the same lands and hereditaments in such newly appointed trustees or trustee, jointly with the old, or former, or continuing trustees or trustee, or in such new trustees solely, as the case

may require, to and for the same or like uses and estates, upon the same or the like trusts, and with the same or like powers as are hereinbefore given to or vested in the trustees respectively parties to these presents.] PROVIDED LASTLY, and it is hereby further declared and agreed by and between the said parties hereto, that the several trustees in and by these presents nominated and appointed, or the trustees or trustee who shall hereafter be nominated or appointed, by virtue of the power and directions hereinbefore contained, or any or either of them, their, or any or either of their heirs, executors, administrators, or assigns, shall not be charged or chargeable for any more or other monies, securities, or property, than the same trustees respectively shall actually receive, or which shall come to their respective hands, under or by virtue of the trusts hereby in him or them reposed, notwithstanding he or they shall or may give or sign, or join in giving or signing any receipt or receipts, or other acquittances, or in the doing any other act or acts for the sake of conformity only, or solely for the satisfaction of the person or persons paying, parting with the same, or requiring the same; And that no one or more of them the said trustees shall be answerable or accountable for the other or others of them, nor for the acts, receipts, neglects, defaults of the other or others of them, any consent, permission, or privity by any or either of them to the payment of money, or performance of any act to or by the other or others of them, with an intent and for the

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*Settlement of
Freeholds.
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Trustees not to
be chargeable
for each other's
acts.

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Nor for involuntary losses.

purpose only of facilitating the execution of the trusts of these presents notwithstanding, nor shall any trustees or trustee who shall be appointed under or by virtue of the proviso last hereinbefore contained, or the heirs, executors, administrators, or assigns, of any such trustees or trustee, be answerable or accountable for the acts, deeds, receipts, neglects, defaults, or omissions of any trustees or trustee, in or to whose place or places they or he shall or may succeed, but each of them the said trustees shall be answerable, accountable, and responsible for his own acts, receipts, neglects, and respective defaults only; Nor shall they, or any or either of them, the said trustees, be answerable or accountable for any person or persons who is, are, or shall be, receiver or receivers of the rents and profits of the said hereditaments and premises, or any of them, or any part thereof, or for any banker, goldsmith, broker, or other person with whom or in whose hands any part of the said trust monies, securities, or property, shall or may be deposited, lodged, or entrusted for safe custody, or otherwise, in the execution of the trusts of these presents; nor for the insufficiency or deficiency of title, in or to any messuages, lands, tenements, or hereditaments which may be had or received by way of exchange, for or in lieu of all or any part of the hereditaments and premises hereby made saleable and exchangeable, or which may be purchased with the money to arise in or by any sale thereof, or with other the trust monies aforesaid; nor for

the insufficiency or deficiency of any mortgage or other the funds or securities in or upon which the said trust monies, or any part thereof, shall be placed out or invested, or which shall happen by the rise or fall in the price of stocks, exchequer bills, or other the said funds or securities, or in or by varying, transferring, or transposing of the same funds or securities, or any of them ; nor for any other misfortune, loss, or damage which shall or may happen to the said trust estates, monies, and premises, or any of them, or any part thereof, in the execution of the aforesaid trusts, or in relation thereto, so that the same be done by and with such consent and approbation as is hereby required to be had or obtained for doing the same, and except any such loss or misfortune shall happen by or through his or their own wilful and respective default or neglect, and then and in that case, each of them respectively shall, singly and alone, be answerable for such loss or damage, or so much thereof as shall arise from such his or their own proper act or default, and not further or otherwise. AND also, that it shall be lawful for the said trustees in these presents named, and every such other or future trustees or trustee to be appointed as aforesaid, their and every of their heirs, executors, and administrators, by and out of the said hereditaments, property, and settled estates and premises, and the rents and profits, and dividends, interest, and proceeds thereof respectively, to deduct and retain to

SETTLE-
MENTS.

MARRIAGE.

*Settlement of
Freeholds.
(Concise Form.)*

Trustees to
retain their
expenses.

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MENTS.**

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and for himself and themselves respectively, and also to allow and pay to his and their co-trustees and co-trustee, or any or either of them, all and every the costs, charges, and reasonable disbursements and expenses, which they, or any or either of them, shall or may, from time to time, or at any time or times, pay, sustain, expend, or be put unto, in, for, or in respect of all or any rents, quit-rents, taxes, fines, heriots, repairs, and outgoings, of, for, or concerning the said hereditaments and premises, salaries, wages, and allowances to bailiffs, stewards, and others, fees to counsel for advice, or otherwise howsoever, in or about the execution of the aforesaid trusts, or any of them, or in any wise relating thereto; and also to settle, adjust, pay, and allow the accounts and disbursements of any trustee or trustees who shall depart this life, or be desirous of being discharged of and from the aforesaid trusts, or who shall be about to reside beyond the seas, or shall neglect or refuse, or become incapable to act in the said trusts, and in whose place or stead, a new trustee or trustees shall have been appointed; and also to receive and give discharges for any money which shall appear to be then due from such trustees or trustee, without he or they or other person or persons paying the same, being liable to see to the application thereof, or being answerable or accountable for the loss, mis-application, or non-application thereof; and it is hereby declared and agreed, that the allowance of which said accounts, disbursements, costs, and

expenses, shall be reckoned and settled fully and liberally, as between solicitor and client, and not as between party and party, in any cause, suit, or legal proceeding (1). IN WITNESS, &c.

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(1) If the provision made for the wife by the settlement, be intended to be in lieu of all subsequent property which may accrue to her, it should be expressly so declared, as it will otherwise be generally considered to be a purchase of her present fortune only; see *Druce v. Denison*, 6 Ves. jun. 385, also 9 *ib.* 18.

Settlement a
purchase of
wife's present
fortune only.

If it be agreed that the settlement should be in satisfaction of the wife's title to dower, say,

Settlement to
be in bar of
dower.

“AND it is hereby further declared and agreed by and between all the said parties to these presents, that the provision hereby made and intended for the said (*intended wife*) to take effect upon the event of her surviving the said (*intended husband*) her said intended husband, shall be, and she doth hereby accept the same in lieu, bar, and full satisfaction of and for all dower and thirds at the common law, or by custom, or otherwise, which she the said (*intended wife*) can or may, or otherwise might have claim, or be entitled to, of, in, to, or out of all or any of the messuages, lands, tenements, and hereditaments whatsoever, whereof he the said (*intended husband*) now is, or shall, or may, during the said intended coverture, be seised for any estate of inheritance in possession, or for any dowable estate or interest whatsoever; and that in case the said intended marriage shall take effect, she the said (*intended wife*) shall and will make, do, acknowledge, suffer, execute, and join in all such acts, deeds, conveyances, and assurances as by the counsel of the said (*intended husband*) his heirs or assigns, shall be advised and required, for releasing, conveying, and surrendering all her right and title of dower, thirds, and freebench, in and to all the estates of the said (*intended husband*) of which he shall be so seised as last aforesaid, to the intent

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that all such right and title may become extinguished in the inheritance of the said estates."

MARRIAGE.

If it be intended that the provision for the wife shall not affect her dower, instead of the preceding variation, say,

*Settlement of
Freeholds.
(Concise Form.)*

Settlement not
to prejudice
wife's dower,
&c.

"PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties to these presents, that nothing herein contained shall in any manner defeat, prejudice, or affect the estate, right, or title to dower or free bench, which the said (*intended wife*) shall or may, at any time after the said intended coverture, have or be entitled to, or if these presents had not been made, would or might have had or become entitled to, in, to, or out of the messuages, lands, tenements, or other hereditaments which the said (*intended husband*) now is or hereafter may be seised of an estate of inheritance, or defeat or prejudice her estate, right, title, or interest of, or in his personal estate, under or by virtue of the statute of distributions, or any rules of the common law or custom, or otherwise howsoever."

Further assurance.

A covenant may also be added for further assurance by the parties.

"AND LASTLY, the said (*intended husband*) and (*intended wife*) for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, do, and each of them doth, hereby covenant, declare, and agree with and to the said (*trustees*) their heirs, executors, administrators, and assigns, that they the said (*intended husband*) and (*intended wife*) respectively, and their respective heirs, executors, and administrators, shall and will from time to time, and at all times hereafter, at their, his, or her own proper costs and charges, upon every reasonable request of the said (*trustees*) or of the survivors or survivor of them, his heirs, executors, or administrators, make, do, and execute, or cause and procure to be made, done, and executed all and every such acts, deeds, matters, and things whatsoever as shall be necessary for the more effectually conveying, assigning, and assuring to and vesting in them

the said (*trustees*) their heirs, executors, administrators, and assigns, the said messuages, &c. principal and other sums, securities, monies, funds, chattels, and premises hereinbefore expressed to be hereby released and assigned, or otherwise assured respectively, and for enabling them, and every, or any of them, to collect, get in, and receive the same premises respectively, and for otherwise promoting and facilitating the execution and performance of all and singular the trusts aforesaid, as by the said (*trustees*) or the survivors or survivor of them, his heirs, executors, administrators, or assigns, or their, his, or any of their counsel learned in the law, shall be reasonably and lawfully advised and required."

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MARRIAGE.
Settlement of Freeholds. (Concise Form.)

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Rectory for
lives of no-
minees.

Variations, &c. where the Property to be settled is a Rectory or Prebend. See ante, p. 443.

“HE the said (*intended husband*) HATH granted and released, and by these presents BOTH grant and release unto the said (*trustees*) and their heirs, ALL and singular the said rectory, prebend, or parsonage and dwelling-house, glebe, and other lands, tithes, hereditaments and premises, which by the said in part recited indenture of demise or lease of the day of , were granted and demised to the said (*intended husband*) his heirs and assigns, together with all houses, out-houses, buildings, gardens, oblations, obventions, offerings, fruits, rights, privileges, emoluments, profits, advantages, and appurtenances whatsoever, to the same belonging or in anywise appertaining, or therewith holden, used, occupied, or enjoyed, or deemed or taken as part, parcel, or member thereof, and the reversion and reversions, remainder and remainders, &c. AND all the estate, &c. (*as ante*). TO HAVE AND TO HOLD the rectory or prebend, parsonage and dwelling-house, tithes, lands, and hereditaments hereby granted and released, or otherwise assured, or intended so to be, and every part thereof, with their respective appurtenances, unto them the said (*trustees*) their heirs and assigns, for and during the term of the natural lives of the said (*nominees*) and other the *cestui que vies* (if any) named in the said indenture of demise or lease, and for and during the life or lives of all and every other person or persons who shall or may be named as a *cestui que vie*, or *cestui que vies*, in any future lease or leases to be made or granted of the same premises, or any part thereof, by virtue of the said indenture; BUT nevertheless upon the several trusts, for the several intents and purposes, and under and subject to the several powers, provisos, limitations, and agreements hereinafter limited, declared, or expressed concerning the same, (that is to say) IN TRUST for the said (*intended husband*) until the said intended marriage shall

take effect. AND from and after the solemnization thereof, then upon trust that they the said (*trustees*) and the survivor of them, and the heirs of such survivor, or their or his assigns, do and shall, from time to time, by and out of the rents, issues, and profits of the said premises, pay the rent and perform the covenants, clauses, and agreements, in or by the said demise or lease, or any future demise or lease, or demises or leases of the same premises, reserved or contained, or to be reserved or contained, and which, on the part of the lessee or lessees, is or ought to be paid, observed, or performed. AND also by the ways and means aforesaid, or by any other lawful ways and means whatsoever, levy and raise such sum or sums of money as shall be necessary for paying, satisfying, and discharging the fines payable on the renewal of any demise or lease, or demises or leases of the same premises, or any part thereof, and all costs, charges, and expenses incident to, or which shall be occasioned by such renewal or renewals, or in relation thereto, and subject to the said trusts and purposes, IN TRUST for the said (*intended husband*) and his assigns, during the term of his natural life, and from and after the decease of the said (*intended husband*), then, &c. (*see ante*, p. 449), and subject thereto IN TRUST for the first son of the body of the said (*intended wife*) by the said (*intended husband*) to be begotten, and the heirs male of the body of such son lawfully issuing, (*or as may be agreed—and see ante*, p. 451, *et seq.*); and for default of such issue, IN TRUST for the second, &c. (*as in other cases, see ante*, p. 307, *et seq.*); and in default of such issue, IN TRUST for all and every the daughter and daughters of the said (*intended wife*) by the said (*intended husband*) to be begotten, &c. (*as in other cases; see ante*, p. 312, *et seq.*); and for default of such issue, IN TRUST for the right heirs of the said (*intended husband*). PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the said (*trustees*) and the survivor of them, and the heirs of such survivor, and they and he are and is hereby authorised and required, at any time or times after the solemnization of the said intended marriage, to make any surrender or surrenders of the said premises, and also of

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the present and now subsisting and any future demise, or lease or leases, for the purpose of obtaining a renewal or revival of the same respectively; AND also to accept and take a new or other lease or leases of the same premises, or any part thereof, with the appurtenances, for the life or lives of any person or persons whomsoever, in such manner as the trustees or trustee for the time being shall think fit, and to execute a counterpart or counterparts of such lease or leases respectively, so that the name or names of all and every person or persons to be inserted or named as *cestui que vie*, or *cestui que vies*, in any such lease or leases to be made or granted of the same premises, or any part thereof, during the lives of the said (*intended husband*) and (*intended wife*) his intended wife, or either of them, shall be with the consent and approbation of them, or of the survivor of them, to be signified in writing for that purpose. AND it is hereby declared and agreed by and between the said parties to these presents, that they and he the said trustees or trustee shall stand seised and possessed of and interested in all and singular the premises to be comprised in and granted by any such new or other lease or leases as aforesaid, upon the same or like trusts, and for the same or like intents and purposes as are hereinbefore declared or mentioned, of and concerning the same premises respectively, or such of them as shall be then existing or capable of taking effect, or as nearly thereto as may be."

Increase of
wife's jointure.

A Provision that Wife's Jointure shall be increased on the Estates being disincumbered from the present Charges is sometimes inserted in a Settlement, as,

"AND the said (*husband*) doth hereby for himself, his heirs, executors, and administrators further covenant, promise, and agree with and to the said (*trustees*) their executors, administrators, and assigns, in the manner following (that is to say) that in case the said intended marriage shall take effect, and all or any of the said several annuities charged on the said hereditaments by the said in part re-

cited will (*or as the case may be*) shall cease by the death of the said annuitants, or of any of them, or otherwise, during the joint lives of the said (*husband*) and (*intended wife*) his intended wife, then and in such case he the said (*husband*) shall and will thereupon, and as soon as may be thereafter, grant, settle, and assure unto and upon or to the use of the said (*wife*) for the term of her natural life, to commence in possession from and immediately after his decease, to be for and as an increase of her said jointure, or annual rent-charge, so much more and such further part of the same hereditaments in and by the said recited will of the said (*testator*) devised as aforesaid, as he the said (*husband*) then can or lawfully may so grant, settle, or assure, by virtue of the said will and of the powers and authorities to him given or reserved in that behalf, and so from time to time, or as often as any of the said annuities shall so cease, in order and to the intent and so that at the time of the decease of him the said (*husband*) she the said (*wife*) his intended wife, (in case she shall survive him) shall and may have then settled and assured unto or upon her such and so much of the said hereditaments of the said (*husband*) as shall amount to one-third part of the then clear yearly value thereof, or as near thereto as may be."

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A Covenant that if the settled Estates do not produce the Wife's Jointure, the unsettled Estates may be made liable to make good the Deficiency.

If settled estates insufficient, unsettled estates to aid.

"AND FURTHER, the said (*intended husband*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said (*trustees*) their heirs, executors, administrators, and assigns, that in case the said (*intended wife*) shall happen to become entitled to the messuages, lands, tenements, hereditaments, and premises hereinbefore limited in use to her the said (*intended wife*) by way of jointure, on her surviving the said (*intended husband*); and the rents, issues, and profits of the same lands, tenements, and hereditaments shall not yield a clear annual sum of £ , then and in that case, all and every other the real and also the personal estates and

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(Concise Form.)Power to raise
a sum by sale.

effects of which the said (*intended husband*) shall die seised, possessed of, or entitled to, shall be liable, and he the said (*intended husband*) doth hereby charge and make the same liable to answer any such deficiency of or in the said sum of £ during the lifetime of the said (*intended wife*)."

A Power may also be introduced for the Trustees to raise a Sum of Money by Sale to purchase a Dwelling-house, or other Purpose.

" PROVIDED ALWAYS, and it is hereby agreed and declared, by and between the parties to these presents, that for and notwithstanding any of the trusts hereinbefore declared, it shall be lawful for the said (*trustees*) and the survivors and survivor of them, and the heirs or executors and administrators of such survivor, when and so soon as the said messuages, &c. or stocks and funds, or a competent part thereof, shall become vested in them, to make sale and dispose of such part of the same, as will raise and produce such sum and sums of money, not exceeding in the whole the sum of £ , as the said (*intended husband*) and the said (*intended wife*), during their lives and the life of the survivor, shall order and direct, by writing, under their, his, or her hands or hand; and it is hereby agreed and declared, that they the said (*trustees*), and the survivors and survivor of them, and his heirs, executors, and administrators, shall stand possessed of and interested in the said sum and sums of money so directed to be raised as aforesaid upon the trusts, and for the intents and purposes hereinafter expressed and declared concerning the same, (that is to say), UPON TRUST (with the consent and approbation, and also by the direction of the said (*intended husband*) and the said (*intended wife*), during their lives and the life of the survivor of them, such consent, approbation, and direction to be testified in writing, under their, his, or her hands or hand) to invest the same in the purchase (*or other purpose*) of a messuage or dwelling-house, to be situated in the county of , of the tenure of fee-simple, or of freehold for lives, or of leasehold for a term or terms of years, not less than years then to come and unexpired

therein; which said messuage or dwelling-house and hereditaments, when purchased, shall be conveyed unto and vested in them the said (*trustees*) and their heirs, or their executors and administrators, according to the tenure thereof, in the same manner, upon the same trusts, and for the same intents and purposes as are hereinbefore declared or expressed concerning the messuages, &c. or stocks and funds, out of which the said sum is to be or shall be raised, or as nearly thereto as the different natures of the same properties, and the rules of law and equity will then admit of."

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Trust to raise an Annuity for Husband's Appointee.

A trust of a term is sometimes declared to raise annuities or sums in gross after husband's death to his appointment, as,

"AND IT IS HEREBY FURTHER DECLARED, that the said term of years is so limited in use to them the said (*trustees for raising portions*) their executors, administrators, and assigns, UPON FURTHER TRUST that they the said (*trustees*) and the survivor of them, and the executors, administrators, and assigns of such survivor, shall and do, from and after the decease of the said (*intended husband*), by sale or mortgage of the premises comprised in the said term of years, or of a competent part thereof, for all or any part of the same term, or by or out of the rents, issues, and profits of the same premises, or by all or any of the ways and means hereinbefore mentioned, but subject nevertheless and without prejudice to the performance of the trusts hereinbefore declared for raising portions and maintenances for younger children, raise, levy, and pay unto or in trust for such person or persons respectively as the said (*intended husband*) shall by his last will and testament in writing, or any writing purporting to be his last will and testament, to be signed, sealed, and published in the presence of three or more credible witnesses, direct, limit, or appoint for and during the natural life or lives of such person or persons respectively so to be appointed or named, such annuity or annuities, or yearly sum or sums, not ex-

Trust to raise
an annuity for
husband's ap-
pointee.

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ceeding together in the whole the clear yearly sum or amount of £ , and in such manner, and subject to such restrictions, conditions, and provisos concerning the application and payment thereof, as the said (*intended husband*) by his last will and testament in writing, or any other writing purporting to be or in the nature of his last will and testament to be by him signed, sealed, and published as aforesaid, shall direct, limit, or appoint: And in default of such direction, limitation, or appointment, then upon trust that they the said (*trustees*) and the survivor of them, and the executors, administrators, or assigns of such survivor, shall and do by any of the ways and means aforesaid, but subject and without prejudice as hereinbefore is lastly mentioned, raise, levy, and pay one annuity or yearly sum of £ unto the said (*intended wife*) or her assigns, for and during the term of her natural life, as an addition to the said annual rent-charge or yearly sum of £ hereinbefore limited and secured unto her and them, the said annuity or yearly sum to be payable and paid by four equal payments on, &c. and the first payment of each the aforesaid annuities to be made on such of the said feasts or days of payment as shall first and next happen after the decease of the said (*intended husband*)."

Trust to raise a Sum to be subject to Husband's Appointment.

Trust to raise a gross sum to husband's appointment.

" AND ALSO upon this further trust, that they the said (*trustees for raising portions*) or the survivor of them, or the executors, administrators, or assigns of such survivor, shall and do in case the said (*intended husband*) shall so direct or appoint by such his last will and testament as hereinafter is mentioned, but not otherwise, raise and levy by sale or mortgage of the premises comprised in the said term of years or of a competent part thereof for all or any part of the same term, or by or out of the rents and profits of the same premises, or by all or any of the ways and means hereinbefore mentioned, but subject and without prejudice

as hereinbefore is last mentioned, such further sum or sums of money not exceeding together in the whole the sum of £ , and pay the same to such person or persons in such parts and proportions, and for such intents and purposes as the said (*intended husband*) by his last will and testament in writing, or any writing purporting to be his last will and testament, to be by him signed, sealed, published, and declared in the presence of and attested by three or more credible witnesses, shall direct, limit, and appoint."

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Power to sell settled Premises for raising Money to pay off Mortgages.

"AND it is hereby declared and agreed by and between the parties to these presents to be the true intent and meaning of these presents, and of the direction, limitation, and appointment, and the grant and release hereinbefore made, that it shall be lawful for the said (*trustees to preserve*) and the survivor of them, and the heirs of such survivor, or their or his assigns, at any time hereafter, during the natural life of the said (*intended husband*) and by his direction and appointment, to be testified as hereinafter mentioned, to raise and levy the sum of £ by sale of such part or parts of the said premises as the said (*intended husband*) shall think proper for the purpose, of or towards paying off and discharging the said sum of £ principal money, which is now due and owing to the said (*mortgagee*) on a mortgage to him of the said premises, and of other incumbrances now affecting the same, and for that purpose it shall be lawful for the said (*trustees*) and the survivor of them, and the heirs of such survivor, and their or his assigns, by the direction and appointment of the said (*intended husband*) signified by any writing or writings under his hand, to make sale and dispose of any part or parts of the said manors, lordships, messuages, lands, tenements, hereditaments, and premises hereinbefore directed, limited, and appointed, and granted and released as is aforesaid, and the fee-simple and inhe-

Power to sell to pay off mortgages.

SETTLEMENTS.

MARRIAGE.

*Settlement of
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(Concise Form.)*

ritance thereof unto any person or persons whomsoever, either together or in parcels, for the best price or prices that can be reasonably procured for the same, and upon payment of the money arising by such sale or sales of the same premises, or of any part thereof, to sign and give proper receipts for the monies for which the same shall be sold, which receipt and receipts, whether signed by all or the only acting trustees or trustee for the time being, shall be a sufficient discharge to any purchaser or purchasers for so much of the purchase-money as shall be in such receipt and receipts acknowledged or expressed to be received, and such purchaser or purchasers shall not afterwards be answerable or accountable for any loss, misapplication, or nonapplication of the said purchase-money, or be in anywise concerned to see to the application thereof; and when any of the said premises shall be so sold, and such proper receipt or receipts shall be signed and given for the purchase-money, all and every the manors, messuages, lands, tenements, and hereditaments so sold and disposed of, and the fee-simple thereof, shall be and remain for ever from thenceforth freed and absolutely discharged of and from all and every the uses, estates, trusts, limitations, charges, powers, provisos, declarations, and agreements, in and by these presents limited, expressed, or declared, of or concerning the same, and then and from thenceforth these presents, and the direction, limitation, and appointment, and grant and release, hereinbefore made, and the several grants and assurances hereinbefore recited, shall operate, be, and enure as to so much of the said premises as shall be sold and disposed of, to the only proper use and behoof of the purchaser or purchasers to whom the same shall be so respectively sold and disposed of, and his, her, and their heirs and assigns for ever, subject only to such leases as shall have been made thereof pursuant to the powers herein-after contained in that behalf. PROVIDED NEVERTHELESS, that the money which shall arise by such sale or sales, or so much thereof as shall be sufficient for that purpose, shall be thereupon applied and disposed of by them the said (*trustees*) or the survivor of them, or the heirs, executors,



or administrators of such survivor, or their or his assigns, in or towards the discharge of the said two principal sums due upon the said two mortgages, and the other incumbrances now affecting the premises as aforesaid. AND it is hereby agreed and declared, that the hereditaments comprised in the said mortgages shall, upon the discharge of the same mortgages, be respectively conveyed, limited, and settled to and for the several uses, intents, and purposes, upon the several trusts, and under and subject to the several charges, limitations, declarations, and agreements which, under the uses and limitations declared and contained in these presents, stood limited or declared at or immediately before the time of such discharge, of and concerning the equity of redemption of such hereditaments respectively, or to, for, upon, and subject to such and so many of them as at the time of such discharge or discharges respectively shall be undetermined or capable of taking effect. AND that the residue or overplus, if any, of the money or monies which shall arise by any such sale or sales over and above what shall be sufficient to discharge the said incumbrances, shall thereupon, with all convenient speed, be laid out and disposed of by them the said trustees or trustee for the time being, by and with the consent and approbation of the said (*intended husband*) and (*intended wife*) or the survivor of them, testified by writing under their, his, or her hands or hand, in the purchase of same lands or hereditaments in that part of Great Britain called England, or within the principality of Wales, of a clear and indefeasible estate of inheritance in fee-simple in possession, which shall be settled and assured by them the said trustees or trustee to such and the same uses, and to and for such and the same ends, intents, and purposes, and upon such and the same trusts, and by, with, under, and subject to the same charges, powers, provisos, limitations, declarations, and agreements as under, the uses and limitations declared or contained in these presents, stood limited and declared at or immediately before the time of such sale or sales respectively, of or concerning the hereditaments so sold, or to, for, upon, and subject to such and so many of them as shall then be undetermined and-capable of taking effect."

SETTLEMENTS.

MARRIAGE.

*Settlement of
Freeholds.
(Concise Form.)*

SETTLEMENTS.

MARRIAGE.

Settlement of
Freeholds.
(Concise Form.)Power to sell
and invest pro-
duce on secu-
rities.*Power for Trustees to sell the Premises, and invest the Produce on Real or Government Securities.*

“ PROVIDED ALWAYS, and it is hereby declared and agreed, that notwithstanding any of the trusts hereinbefore declared, all or any part of the said messuages or tenements and premises shall or may be absolutely sold and disposed by the said (*trustees*) or the survivor of them, his executors or administrators, with the consent in writing of the said (*husband*) and (*wife*) or of the survivor of them, for any price which such trustees or trustee shall think reasonable, and that in case of such sale the money to arise or be produced from the same shall be paid to the said (*trustees*) or the survivor of them, his executors or administrators, without any necessity or obligation on the part of the purchaser or purchasers thereof to see to the application of such money, or any part thereof, so as he, she, or they shall take the receipt or receipts of the said (*trustees*) or the survivor of them, his executors or administrators, or other only acting trustees or trustee for the time being, for the same money; and further, that the money arising from such sale or sales shall, with the consent in writing of the said (*husband*) and (*wife*) during their joint lives; and after the death of one of them, with the consent in writing of the survivor of them; and after the death of the survivor of them, then at the discretion and of the proper authority of the said (*trustees*) or the survivor of them, his executors or administrators, be invested at interest or on real or government securities, and which securities, with such consent or in such discretion as aforesaid, shall or may be varied and transposed from time to time, as occasion shall require; and moreover, that the same money and the securities in and upon which the same shall from time to time be invested, and also the interest and dividends thereof, shall be holden upon the same or the like trusts as are hereby expressed and declared of and concerning the messuages or tenements respectively from which such money shall arise or be produced, and of and concerning the rents and income of the same messuages or tenements and premises respectively. AND it is hereby further provided, declared, and agreed, by and between all the parties to these presents, that the person or per-

Indemnification
to persons pay-
ing monies to
the trustees.

sons who from time to time shall or may have all or any part of the said money in his, her, or their hand or hands, or upon securities to be given by him, her, or them, shall not be obliged or required to see to the application or disposition of the same money, or any part thereof, or the interest, dividends, and annual income thereof, or of any part thereof, after payment of the same to the person or persons who for the time being shall be the acting trustee or trustees under this settlement, or be answerable or accountable for the misapplication or non-application of the same money, or any part thereof, by him or them; and that all receipts which shall be given for the said trust money, or any part thereof, or the interest, dividends, and income of the same, or any part thereof, or for the said rents and income, or any part thereof, or for the money to become due under such insurance as aforesaid, or any part thereof, by the person or persons who, for the time being, shall be the acting trustee or trustees under this settlement shall be good, effectual, and sufficient acquittances and discharges for all and every sum and sums of money which therein and thereby respectively shall be acknowledged or expressed to be or to have been received."

SETTLEMENTS.

MARRIAGE.

*Settlement of
Freeholds.
(Concise Form.)*

An Assignment of an outstanding Term to attend, &c.

"AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, [and in consideration of the sum of ten shillings of lawful money of Great Britain by the said (*intended assignee of the term*) to the said (*former termor*) in hand paid, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged,] he the said (*termor*) by the direction of the said (*intended husband*) and (*intended wife*) testified by their being parties to and executing these presents, HATH bargained, sold, assigned, transferred, and set over, and by these presents BOTH bargain, sell, assign, transfer, and set over unto the said (*assignee*) his executors, administrators, and assigns, ALL and singular the messuages, &c. comprised in the said term

An assignment
of outstanding
term.

SETTLE-
MENTS.

MARRIAGE.

*Settlement of
Freeholds.
(Concise Form.)*

of years, created by the said hereinbefore recited indenture of the day of , as aforesaid, with their and every of their appurtenances, and all the estate, right, title, interest, term of years, property, claim, and demand whatsoever, both at law and in equity, of him the said (*termor*) of, in, and to the same premises, and every or any part thereof, To HAVE AND TO HOLD the said messuages, &c. and all and singular other the premises lastly hereinbefore mentioned or referred unto, and intended to be hereby assigned, with their and every of their appurtenances, unto the said (*assignee*) his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during the rest, residue, and remainder of the said term of years, which is yet to come and unexpired, IN TRUST nevertheless to attend and wait upon the reversion and inheritance of the said premises, according to the uses and estates hereby limited concerning the same, and in order to protect the same premises from all mesne charges and incumbrances, if any such there be." (*Add usual covenant by termor that he hath not incumbered, as ante, p. 377, n. (1).*)

. See other provisos, &c. *ante*, No. II. p. 401, *et seq.* and *post*, p. 525, *et seq.*

SETTLEMENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

No. IV.

*Settlement of Real and Personal Property of the
Lady.*

*Variations where Part of the Real Estate is Copyhold
or Leasehold.*

*Where the Personalty is a Debt, a Legacy, or Residuary
Property, &c. as in Margins below (1).*

THIS INDENTURE of three parts, made the
day of , in the year of the reign, &c.
and in the year of our Lord . BETWEEN
(*the intended husband*) of, &c. of the first
part, (*the intended wife*) of, &c. of the second
part, and (*trustees for raising portions, &c.*) (2) of,
&c. being trustees named and appointed on
the part and behalf of the said (*intended wife*) for
the purposes hereinafter mentioned, of the third
part. AND WHEREAS the said (*intended wife*) is
seised to her and her heirs in fee-simple of the
messuages, lands, and hereditaments hereinafter
described, and is also entitled to divers sums of

Recital of
property.

(1) See also the notes and variations to No. II. *ante*, p. 281; Notes, &c.
et seq.

(2) If trustees are to be appointed for other purposes also, Trustees.
see *ante*, No. II. p. 282.

SETTLE-
MENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

money, secured on bonds and other securities, and hath also a claim to certain other property, hereinafter mentioned, over which she hath not at present an absolute control or dominion. AND

WHEREAS a marriage hath been agreed upon and is intended to be shortly had and solemnized between the said (*intended husband*) and the said (*intended wife*) and upon the treaty for the said marriage it was agreed, that the said messuages, lands, and hereditaments, monies, securities, and property, should be respectively conveyed, settled, assigned, and assured to and for the uses, intents, and purposes, upon the trusts, and with, under, and subject to the powers, provisos, declarations, and agreements hereinafter limited, declared, or expressed, concerning the same; and also that the said (*intended husband*) should enter into such covenants and agreements concerning all other real and personal estates as should or might come to the said (*intended wife*) during the said intended coverture as hereinafter is contained.

WITNESS,
intended wife
grants, &c. her
freehold pro-
perty to trustees.

NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, entered into upon the treaty for the said (*intended wife*) as to and concerning the real estates of which the said (*intended wife*) is seised as aforesaid, and for and in consideration of the said intended marriage, and for making a provision for the said (*intended wife*) and the issue (if any) of the said intended marriage, [and also for and in consideration of the sum of 10s. of lawful money of Great Britain, to the said (*intended wife*) in

hand paid by the said (*trustees*) at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged,] she the said (*intended wife*) with the approbation and consent of the said (*intended husband*) testified by his being a party to and signing and sealing these presents, HATH granted, bargained, sold, aliened, released, and confirmed, and by these presents BOTH grant, bargain, sell, alien, release, and confirm unto the said (*trustees*) and to their heirs, ALL, &c. (*here describe the freehold premises to be settled*) (1), or howsoever otherwise the said messuages, &c. pieces or parcels of land and hereditaments, now are, or late were, or at any time heretofore have been situated, called, known, described, tenanted, or distinguished, together with all [ways, paths, passages, water, water-courses, drains, hedges, ditches, mounds and fences, rails, pales, timber and other trees, common of pasture and turbary, and other commons, feeding, lights,] easements, profits, privileges, advantages, emoluments, and appurtenants whatsoever to the said messuages, &c. pieces or parcels of land, and hereditaments, or any of them belonging, or in any wise appertaining, or therewith, or with any part thereof, usually occupied or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member thereof, or of any part thereof, all which said messuages, &c. are now in the actual possession

SETTLEMENTS.

MARRIAGE.

Real and
Personal.
(Concise Form.)

Freehold
parcels.

(1) See *ante*, p. 291, n. (2).

SETTLE-
MENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

TO HOLD to
uses, &c. after
mentioned.

Wife till
marriage.

of or legally vested in the said (*trustees*) by virtue of a bargain and sale to them thereof made by the said (*intended wife*) for five shillings consideration, by indenture bearing date the day next before the day of the date of these presents, for one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute for transferring uses into possession; and the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits thereof, and of every part thereof, and all the estate, right, title, interest, use, trust, inheritance, property, possession, claim, and demand whatsoever, both at law and in equity, of her the said (*intended wife*), of, in, to, or out of, the same, and every, or any part or parcel thereof; TO HAVE AND TO HOLD the said messuages, &c. pieces or parcels of land, hereditaments, and all and singular other the premises hereby granted and released, or otherwise assured, or intended so to be, with their and every of their appurtenants, unto the said (*trustees*) their heirs and assigns for ever; but nevertheless to and for the uses, intents, and purposes, upon the trust, and with, under, and subject to the powers, provisos, declarations, and agreements hereinafter declared or expressed concerning the same (that is to say) TO THE USE of the said (*intended wife*) and her heirs, until the said intended marriage shall be had and solemnized, and from and after the solemnization thereof, TO THE USE of the said (*intended wife*) for and during the

term of her natural life, to and for her own sole and separate use and benefit, or to the use of such person or persons as she the said (*intended wife*), by writing under her hand, shall at any time, during the said intended coverture, direct or appoint, and in default of such direction or appointment, then IN TRUST to pay the rents, issues, and profits of the said hereditaments and premises into the proper hands of her the said (*intended wife*) for and during her life, to and for her sole and separate use, wholly independently of the said (*intended husband*), and without the same being subject to his debts or engagements, and the receipts of the said (*intended wife*) alone, notwithstanding her coverture, it is hereby declared shall be a good and sufficient discharge for so much of the said rents and profits as shall be therein acknowledged or expressed to be received, and from and after the decease of the said (*intended wife*) then TO THE USE (1) of all and every the child and children of the said (*intended wife*) by the said (*intended husband*) to be begotten, for such estates and interests, and in such shares and proportions, and to be vested in him, her, or them, at such respective ages or times, and in such manner as she the said (*intended wife*) alone and notwithstanding her coverture, by any deed or

SETTLEMENTS.
MARRIAGE.
Real and Personal.
(*Concise Form.*)
Wife or her appointees for life.

Then to use of children of the marriage, as wife shall appoint.

Strict settlement.
Other uses.

(1) If the premises are intended to be limited in strict settlement, see *ante*, p. 307.
See other uses and limitations, *ante*, No. II. p. 294, *et seq.*

SETTLEMENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

In default of
appointment, to
them equally.

In default of
issue.

Use of wife's
appointees.

instrument in writing, to be sealed and delivered by her in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any writing in the nature of her last will and testament, to be signed and published by her in the presence of three or more credible witnesses, shall direct or appoint, and for want or in default of such direction or appointment, or in case any such shall be made then, when and as the estates or interests thereby limited shall respectively end and determine. To THE USE of all and every the child and children of the said (*intended wife*) by the said (*intended husband*) to be begotten, and their respective heirs and assigns for ever, if there shall be more than one, and to take as tenants in-common and not as joint-tenants, but if there shall be only one such child, then to the use of such one or only child, his or her heirs or assigns for ever; and in default of issue of the said (*intended wife*) by the said (*intended husband*) TO THE USE of such person or persons, and for such estate and estates, interest and interests, ends, intents, and purposes, and with and subject to such powers, provisos, declarations, and agreements as the said (*intended wife*) alone and notwithstanding her coverture, by any deed or instrument in writing, to be sealed and delivered by her in the presence of two or more credible witnesses, or by her last will and testament in writing, or any codicil or writing in the nature of her last will and testament, to be signed and published by her in the presence of and to be at-

tested by three or more credible witnesses, shall direct or appoint; AND for want or in default of such last mentioned direction or appointment, or in case any such shall be made then, when and as the estates so directed and appointed shall respectively end and determine, to the use of the said (*intended wife*) her heirs and assigns for ever, and to or for no other uses whatsoever. AND, &c. (1) AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and performance of the said agreement as to and concerning the monies and securities for money of the said (*intended wife*) [and for and in consideration of the further sum of ten shillings of lawful money aforesaid, to the said (*intended wife*) in hand paid by the said (*trustees*) at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged,] she the said (*intended wife*) with the consent and approbation of the said (*intended husband*) (testified as hereinafter is mentioned), HATH bargained, sold, assigned, transferred, and set over, and by these presents DOTN bargain, sell, assign, transfer, and set over unto the said (*trustees*) their executors, administrators, and assigns, ALL (2) and every the bonds, bills, notes,

SETTLEMENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

Remainder to
use of wife's
heirs.

FURTHER WIT-
NESS, assign-
ment of debts,
&c.

(1) If copyholds are also to be settled, see *ante*, p. 412. Copyholds.

(2) If the personal property to be settled be a legacy or sum to which the wife is entitled by will, say, Legacy.

“ALL that legacy or principal sum of £ , and all and singular other the principal sum and sums of money to which she the said (*intended wife*) is entitled under or by virtue of the will and testament of the said , and all interest

SETTLE-
MENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

and other securities, and the monies respectively due thereon, which she the said (*intended wife*) now is possessed of, interested in, or entitled to, together with all vouchers and papers in any wise

from henceforth to become due for or in respect of the same or any part thereof, and all the right, title, interest, property, claim, and demand whatsoever of her the said (*intended wife*) of, in, and to the said principal and interest monies, or any or either of them, To HAVE, HOLD, receive, and take the said sum and sums of money, and all and singular other the premises hereby assigned or otherwise assured or intended so to be, and all remedies for recovering the same, unto the said (*trustees*) their executors, administrators, and assigns, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisos, and agreements hereinafter limited, declared, and contained of and concerning the same."

Residuary
estate.

If it be residuary estate, say,

"ALL and singular the residue and remainder of the goods, chattels, monies, stocks, funds, securities for money, and personal estate whatsoever and wheresoever, late of the said deceased, which shall or may remain after the payment of his debts, funeral expenses, and legacies, and to which the said (*intended wife*) is entitled, as his residuary legatee, as aforesaid. AND all the estate, right, title, interest, property, claim, and demand whatsoever of her the said (*intended wife*) therein or thereto; and all powers, authorities, and remedies, for recovering, receiving, and getting in the same; To HAVE, HOLD, receive, take, and enjoy all and singular the said premises, lastly hereinbefore assigned or otherwise assured, with the appurtenances, unto and by the said (*trustees*) their executors, administrators, and assigns, upon the several trusts, and to and for the several ends, intents, and purposes, and under and subject to the several provisos, declarations, and agreements, hereinafter declared or expressed concerning the same respectively."

touching or concerning the same, To HAVE, HOLD, receive, perceive, and take the said bills, bonds, notes, and other securities, and the monies respectively due thereon, and other the premises hereby assigned, or otherwise assured, or intended so to be, unto the said (*trustees*) their executors, administrators, and assigns for ever; But nevertheless upon the trusts, and to and for the intents and purposes hereinafter mentioned, declared, or expressed, concerning the same. AND for the considerations aforesaid, the said (*intended wife*) hath made, ordained, constituted, and appointed, and by these presents doth make, ordain, constitute, and appoint the said (*trustees*) their executors and administrators, and each of them, and other the trustees, or only acting trustees or trustee for the time being, the true and lawful attornies and attorney of her the said (*intended wife*) her executors and administrators, to demand, receive, collect, and get in, and to use and prosecute all and every or any legal or equitable means, for the obtaining and getting in the said monies and premises, and from time to time to appoint any one or more attorney or attornies, or agent or agents, for any of the said purposes, or otherwise, and again to displace and remove any such attorney or attornies, agent or agents, at the discretion of the said trustees or trustee, and from time to time to appoint and substitute any other fit person or persons in the room or place of such last-mentioned attorney or attornies, agent or agents, and to make to every or any attorney or

SETTLEMENTS.

MARRIAGE.

Real and
Personal.
(Concise Form.)

To hold to
trustees and
their heirs.

Power of
attorney.

SETTLEMENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

attornies, agent or agents, so to be appointed as aforesaid, such reasonable allowance for his or their trouble as to the said trustees or trustee shall seem meet, and further to do and execute all and every other act and acts requisite or expedient for effecting the premises, as fully and amply, to all intents and purposes, as she the said (*intended wife*) could or might have done in her own proper person, if these presents had not been made, she the said (*intended wife*) hereby ratifying and confirming all and whatsoever the said (*trustees*) shall lawfully do or cause to be done in or about the premises by virtue of these presents; and it is hereby agreed and declared by and between the parties to these presents, to be the true intent and meaning of them, and of these presents, that the bonds, bills, notes, and other securities, and the monies respectively due thereon, expressed to be hereby transferred unto the said (*trustees*) their executors, administrators, and assigns, as aforesaid, are, or are meant to be, so transferred to the intent that they the said (*trustees*) and the survivor of them, and the executors and administrators of such further survivor, shall stand possessed of and interested in the same, and the growing interest, income, and proceeds thereof, upon the trusts, and to and for the intents and purposes hereinafter mentioned, expressed, and declared of and concerning the same (that is to say) IN TRUST for the said (*intended wife*) her executors and administrators, until the said intended marriage shall be had and solemnized;

Trust for wife
for life inde-
pendently of
her husband.

and from and after the solemnization thereof, THEN UPON TRUST to pay the interest, income, and proceeds of the said monies so due and owing on the said bonds, bills, notes, and other securities, as aforesaid, unto the said (*intended wife*) for and during her life, to and for her own sole and separate use and benefit, or to such person or persons as she by writing under her hand shall from time to time, notwithstanding her coverture, direct or appoint. AND it is hereby agreed and declared, that the receipt and receipts of the said (*intended wife*) and her appointee or appointees shall be a good and effectual discharge for so much thereof as shall be therein acknowledged or expressed to be received, and that the same shall not be subject or liable to the debts, control, or engagements of the said (*intended husband*). AND from and after the decease of the said (*intended wife*) it is hereby agreed and declared, that the said (*trustees*) and the survivor of them, his executors and administrators, and other the trustees or trustee aforesaid, shall stand possessed of and interested in the said bonds, bills, notes, and other securities, and the monies due thereon, and the accumulating interest, income, and proceeds thereof, IN TRUST for all and every the child and children of the said (*intended wife*) by the said (*intended husband*) to be begotten, in such shares and proportions, and to be paid at such age or ages, time or times, and with such benefit of survivorship, or otherwise, as the said (*intended wife*) alone and notwithstanding her coverture, by any deed

SETTLEMENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

Trust for children of the marriage as wife shall appoint.

SETTLE-
MENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

Default of ap-
pointment for
children
equally.

Survivorship.

or instrument in writing, to be sealed and delivered by her in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any writing in the nature of her last will and testament, to be by her signed and published in the presence of the like number of witnesses, shall direct and appoint; and for want or in default of such direction or appointment, and as to so much of the said trust premises whereof no complete direction or appointment shall have been made, IN TRUST for all and every the children of the said (*intended wife*) by the said (*intended husband*) to be begotten, equally to be divided amongst them, if more than one, share and share alike, and in case there shall be but one such child, then in trust for such one or only child, for his, and her, and their portion and portions, the parts and shares, or the whole thereof, to be paid to such children or child, in the manner following (that is to say) to such of them as shall be a son or sons, at his or their age or respective ages of twenty-one years, and to such of them as shall be a daughter or daughters, at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen, unless such time or respective times of payment shall happen in the lifetime of the said (*intended wife*) and in such case to be paid immediately after her decease. PROVIDED ALWAYS, that if any such child or children, being a son or sons, shall depart this life under the age of twenty-one years, or being a daughter or daughters, shall de-

part this life, under the age of twenty-one years, and unmarried, then the part or share, or parts or shares, of him, her, or them, so dying, shall go and accrue to the survivors of such children, to be equally divided between them, if more than one, share and share alike, and to be paid and payable at such days and times, and to go in such manner to such surviving child or children, as his, her, or their original share or shares; and in case of the death of any other of the said children before such accruing or surviving part or share, or parts or shares, shall become due as aforesaid, then as well such original part or share, or parts or shares, as also such accruing part or share, or parts or shares, shall be subject and liable to such new chance, contingency, or condition of accruer to the survivors or survivor of such children as hereinbefore is declared touching his, her, or their original part or share, or parts or shares. PROVIDED ALWAYS, that notwithstanding the postponing the payment of the said share or shares till after the decease of the said (*intended wife*), as well all and every such original share or shares, as also all and every such surviving or accruing share or shares, shall be deemed and considered as vested interests, or a vested interest in such of the said children or child as, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain the age of twenty-one years, or be married in the lifetime of the said (*intended wife*), and shall be transmissible to his, her, and their respective personal representatives accordingly. AND UPON THIS FURTHER TRUST, that they

SETTLEMENTS.

MARRIAGE.

Real and Personal.
(*Concise Form.*)

Maintenance,
&c.

SETTLE-
MENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

Advancement.

Default of chil-
dren, trust for
wife's ap-
pointees.

the said (*trustees*) and the survivor of them, his executors and administrators, from and after the decease of the said (*intended wife*), do and shall in the mean time, and until the share or shares of such child or children as aforesaid shall become payable, by virtue of these presents, pay and apply such part of the interest and proceeds of the said monies so due and owing on the said bonds, bills, notes, and other securities aforesaid, for and towards the maintenance and education of such child or children, in such proportion as they the said trustees or trustee shall in their or his discretion think fit; and do and shall permit and suffer the surplus and residue of the interest and proceeds of the share or shares of such children or child respectively to accumulate for the benefit of such person or persons as shall be intitled thereto by virtue of these presents. PROVIDED ALWAYS, and it is hereby further agreed and declared, that it shall be lawful for the said (*trustees*) and the survivor of them, his executors and administrators, at any time or times after the decease of the said (*intended wife*), to pay any part of the share or shares of any such child or children as aforesaid, being a son or sons, for the putting or placing him or them to or in any trade, business, profession, or employment, or otherwise, for his or their preferment or advancement in the world, notwithstanding he or they shall not then have attained his or their age or ages of twenty-one years. PROVIDED, and it is hereby agreed and declared, by and between the parties to these presents, that in case there shall be no child

of the said (*intended wife*) by the said (*intended husband*), or there being such, if every son shall depart this life under the age of twenty-one years, and every daughter shall depart this life under that age and unmarried, then they the said (*trustees*) and the survivor of them, and the executors and administrators of such survivors, shall stand possessed of, and interested in the said bonds, bills, notes, and other securities, and the monies due thereon, and the then accumulated interest and proceeds thereof, IN TRUST for such person and persons, to and for such ends, intents, and purposes, and in such manner as she the said (*intended wife*) alone, and notwithstanding her intended coverture, by any deed or instrument in writing, to be sealed and delivered by her in the presence of, and attested by, two or more credible witnesses, or by her last will and testament in writing, or any writing in the nature of her last will and testament, to be signed and published by her in the presence of the like number of witnesses, shall direct or appoint; and for want of, or in default of such last mentioned direction or appointment, and as to so much of the said premises whereof no complete direction or appointment shall have been made, IN TRUST for the next of kin of the said (*intended wife*) according to the statutes for the distribution of intestate's estates, and as if the said (*intended wife*) had departed this life unmarried and intestate. AND THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement entered into upon the said treaty for the said intended marriage, by

SETTLEMENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

FURTHER
WITNESS,
covenant by
husband to per-
mit wife to
enjoy and
dispose, &c. of
her future as
well as of her
present pro-
perty.

SETTLE-
MENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

the said (*intended husband*) in regard to the property to which the said (*intended wife*) is now or may hereafter become intitled as aforesaid, he the said (*intended husband*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said (*trustees*) their executors, administrators, and assigns, that he the said (*intended husband*) will not only permit the said (*intended wife*) during the said intended coverture, to have, receive, and enjoy, to her own separate use and benefit, the said monies and premises hereby settled as aforesaid, and also the said sum of £ , when the claim of the said (*intended wife*) thereto shall become absolute, and also the said estate at , (*or as the case may be*); but also that if he the said (*intended husband*) in right of the said (*intended wife*) shall become interested in or intitled to any real or personal estate which shall hereafter be given or bequeathed, or which shall descend to the said (*intended wife*), he the said (*intended husband*) his heirs, executors, and administrators, shall and will permit and suffer the same, and every part thereof, to be and remain at the entire disposition of the said (*intended wife*) either for her own use or for the use of any other person or persons whom she shall appoint; and for the better effecting the said purpose, he the said (*intended husband*) his heirs, executors, and administrators, shall and will join with the said (*intended wife*) in conveying, assigning, and assuring, as well the said sum of £ , and the said estate at , and other the property aforesaid, when requested so to do, as also all such

real and personal estate as shall hereafter descend to, or be given and bequeathed to the said (*intended wife*) during the said intended coverture, unto and to the use of the said (*trustees*) their heirs, executors, administrators, and assigns, or to the trustees for the time being of the trust premises, according to the nature and quality of the same premises respectively, upon trust, that they the same trustees respectively, or their heirs, executors, administrators, or assigns, do and shall convey, assign, transfer, pay, make over, and deliver the same respectively to such person or persons, for such estate or estates, upon such trusts, and to and for such ends, intents, and purposes, and with, under, and subject to such powers, provisos, limitations, declarations, and agreements, and charged and chargeable with the payment of such annual or gross sum, and in such manner and form as she the said (*intended wife*) shall, at any time or times during her life, notwithstanding her coverture, and whether covert or sole, by any deed or deeds; writing or writings, with or without power of revocation, to be by her sealed and delivered in the presence of two or more credible witnesses, or by her last will and testament, in writing, or any codicil thereto, or any writing purporting to be or in the nature of her last will and testament, or a codicil, to be by her signed and published in the presence of three or more credible witnesses, direct or appoint, and in default of, and in the meantime, until any such direction or appointment, and in case any such

SETTLEMENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

**SETTLE-
MENTS.**

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

shall be made, then when and as the estates and interests thereby directed or appointed shall respectively end and determine, and as to such part or parts thereof whereof no such direction or appointment shall be made, upon trust, that they the said trustees, and their heirs, executors, administrators, and assigns respectively, shall stand and be seised, possessed of, and interested in the said lands, hereditaments, and real estate, and the said last mentioned sum and sums of money, legacies, goods, chattels, and personal estate, or so much of the said hereditaments and premises respectively as shall not have been so directed or appointed by her the said (*intended wife*) as aforesaid, IN TRUST for her the said (*intended wife*) and her heirs, executors, administrators, and assigns, according to the nature and quality of the same hereditaments and premises respectively, and upon or for no other trust, intent, or purpose whatsoever. AND it is hereby declared and agreed, that in the mean time, and until such direction or appointment as is last hereinbefore mentioned shall be made by her the said (*intended wife*), the said trustees and trustee of the said hereditaments and real estate, and of the said last-mentioned personal estate, shall pay all the rents, issues, and profits, interest, dividends, and income thereof, into the proper hands of her the said (*intended wife*), for her own sole and separate use and benefit, or to such person or persons as she shall, by any writing signed by her, from time to time, direct or appoint, independently of

the said (*intended husband*), and without the same being subject or liable to his control, debts, or engagements; but the receipt and receipts of the said (*intended wife*), or of such person or persons as she shall, from time to time, appoint, shall always, notwithstanding her coverture, be a good and sufficient discharge for so much of the said rents, issues, and profits, interest, dividends, and income, as shall be therein expressed or acknowledged to be received. AND LASTLY, that he the said (*intended husband*) his executors and administrators, shall and will, at all times, after the solemnization of the said intended marriage, permit and suffer the said (*intended wife*) to retain, use, and enjoy all and singular her jewels, watches, rings, necklaces, trinkets, ornaments of her person and paraphernalia whatsoever; and also at her own discretion, and according to her own free will and pleasure, and for her own separate use and benefit, to sell, exchange, give, alter, or dispose of the same, or any part of them, at any time or times during her life, and to give and bequeath the same by her last will and testament, in writing, or any writing purporting to be or being in the nature of her last will and testament, with or without an executrix or executor thereof, to be by her signed and published in the presence of two or more credible witnesses, without any hinderance, or interruption, of or by him the said (*intended husband*), his executors, administrators, or assigns, or any other person or persons by his

SETTLEMENT.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

Wife to retain
and dispose of
her jewels, &c.

SETTLEMENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

Wife's right of
dower, &c. not
to be prejudiced.

or their order, or by or with his or their consent or permission. PROVIDED ALWAYS, and it is hereby declared and agreed, by and between the parties to these presents, that nothing herein contained shall in any manner prejudice or affect the right of, or title to dower of the said (*intended wife*) of or in the lands, tenements, and hereditaments of the said (*intended husband*), or her share of, or interest in his personal estate, under or by virtue of the statute of distribution (1). IN WITNESS, &c.

Dower.

(1) If the settlement is to be in lieu of the wife's dower and thirds, see *ante*, p. 489, n. (1).

Other provisions.

* * See various other provisions in settlements of the lady's fortune, in *riders post*, p. 525, *et seq.*; also *ante*, p. 243, *et seq.*

SETTLEMENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

Copyholds;
see *ante*, p. 247.

*Riders.**Appointment of Copyholds to the same Uses as the Freeholds.*

“AND THIS INDENTURE FURTHER WITNESSETH, and the said (*intended wife*) in further execution of the powers and authorities in her vested as aforesaid, by this present deed or writing by her executed as hereinbefore is expressed, and with the privity and consent of the said (*intended husband*), her husband, testified as aforesaid, HATH directed, declared, limited, given, and appointed, and by these presents DOTH direct, declare, give, and appoint all and singular the copyhold or customary messuages, farms, lands, tenements, parts and shares, and hereditaments, which were in and by the said recited indenture of lease and settlement of the day of , covenanted and agreed to be surrendered and assigned as aforesaid, (except such of the said copyhold hereditaments as have been sold and disposed of as aforesaid) with their and every of their appurtenances, from and immediately after the decease of her the said (*intended wife*), to such and the same uses, upon such and the same trusts, and to and for such and the same ends, intents, and purposes, and under and subject to such and the same powers, provisos, declarations, limitations, and agreements, as are hereinbefore limited, expressed, and declared, of and concerning the freehold hereditaments hereinbefore directed, limited, and appointed, or as near thereto as the customs of the manors whereof the said copyhold hereditaments are holden, and the rules of law and equity will permit.”

Covenant by Husband, that his Dwelling-house, &c. shall become the Wife's Property.

Husband's
dwelling-house
to wife sur-
viving.

“AND the said (*intended husband*) doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said (*trustees*) their heirs, executors, and ad-

SETTLE-
MENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

ministrators, in manner following, (that is to say) That if he the said (*intended husband*) shall die in the lifetime of her the said (*intended wife*), then and in such case the mesuage or dwelling-house of him the said (*intended husband*), situate at _____, or other house wherein he shall reside at the time of his death, with all the out-offices and out-buildings, gardens, and pleasure-grounds thereunto belonging, and all the lands holden by him therewith, and all and singular the household goods and household furniture, books, plate, china, horses, carriages, and implements of husbandry, and live and dead stock of every nature and kind which shall then be in, upon, or about the same houses, offices, and buildings, gardens and pleasure grounds and lands; and also all the jewels, watches, rings, and trinkets of him the said (*intended husband*), shall respectively, upon and immediately after the death of him the said (*intended husband*) become the absolute property of, and vest in her the said (*intended wife*) and her assigns, for and during the term of her natural life, without impeachment of waste: and that the heirs, executors, administrators, and assigns of him the said (*intended husband*) shall and will, immediately after his death, whenever thereunto required by the said (*intended wife*), or her assigns, (but at her and their costs and charges) well and effectually convey, assign, surrender up, and deliver the same hereditaments and premises unto her the said (*intended wife*), or her assigns accordingly."

Appointment by Lady of a Sum due on Mortgage, in Pursuance of a Power, (and see post, p. 538, n. (1)).

After the recital of the mortgage, recite the assignment to the trustees.

Recital of assignment of mortgage.

AND WHEREAS by a certain deed-poll or instrument in writing, bearing date the day next before the day of the date hereof, and indorsed on the _____ skin of the said in part recited indenture of release, by way of mortgage, she the said (*intended wife*), with the privity, consent, and approbation of the said (*intended husband*), HATH

granted and released, or otherwise assured unto the said (*trustees*), (in their actual possession, being by virtue of a bargain and sale for a year to them thereof made by the said (*intended wife*), in the manner therein mentioned) and to their heirs, ALL and singular the messuages, farms, lands, and hereditaments, comprised in the said indenture whereon the said deed-poll is indorsed, with their and every of their appurtenances, To HOLD the same unto and to the use of the said (*trustees*), their heirs and assigns for ever, but subject nevertheless to such equity of redemption on payment of the said sum of £ , and the interest thereof, as by force and virtue of a proviso contained in the said indenture whereon the said deed-poll is indorsed, was and is subsisting of or concerning the premises; AND the said (*intended wife*), with the like privity, consent, and approbation of the said (*intended husband*), HATH thereby assigned, transferred, and set over unto the said (*trustees*), their executors, administrators, and assigns, the said sum of £ , secured by the said indenture whereon the said deed-poll is indorsed, and all interest due and to grow due for the same. AND it was and is thereby agreed and declared, that the said (*trustees*), their executors, administrators, and assigns, shall stand and be possessed of and interested in the said sum of £ , and the interest thereof, upon such trusts, and to and for such intents and purposes as the said (*intended wife*), whether sole or covert, and notwithstanding any coverture, should, by any deed or deeds, writing or writings, to be by her sealed and delivered in the presence of two or more credible witnesses, within the space of six calendar months then next ensuing, declare, direct, limit, or appoint, and for want of such declaration, limitation, or appointment, and in the meantime until such declaration, direction, limitation, or appointment should be made, IN TRUST for her the said (*intended wife*) her heirs and assigns. Now THIS INDENTURE WITNESSETH, that in pursuance of, and for further effectuating the said agreement entered into upon the treaty for the said intended marriage, and for and in consideration of the said intended marriage, and of the covenant and

SETTLEMENTS.

MARRIAGE.

Real and
Personal.
(Concise Form.)

Appointment in
pursuance of a
power.

SETTLE-
MENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

Declaration of
the trusts.

To lady till
marriage.

agreement hereinafter contained on the part and behalf of the said (*intended husband*), and for divers other good causes and considerations, she the said (*intended wife*), pursuant to, and by force and virtue, and in exercise and execution of the power and authority given or limited to her by the said deed-poll, as hereinbefore is recited, and by force and virtue of all and every other power and powers, authority and authorities, enabling her in this behalf, with the privity, consent, and approbation of the said (*intended husband*), her said intended husband, testified by his sealing and delivering these presents, HATH declared, directed, limited, and appointed. AND by this present deed or writing by her sealed and delivered in the presence of the two credible persons whose names are intended to be hereon indorsed as witnesses attesting the same, DOTH declare, direct, limit, and appoint that the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and other the trustees or trustee for the time being hereof, shall stand and be possessed and interested of and in the said sum of £ , secured by the said mortgage, and assigned by the said deed-poll as aforesaid, and the interest thereof, upon the several trusts, and to and for the several intents and purposes, and under and subject to the several powers, provisos, declarations, and agreements, next hereinafter expressed. AND THIS INDENTURE FURTHER WITNESSETH, that it is hereby agreed and declared by and amongst the parties to these presents, and in particular the said (*intended wife*) doth hereby direct and appoint, that they the said (*trustees*), and the survivors and survivor of them, and the executors and administrators of such survivor, and other the trustees and trustee aforesaid, shall and will stand and be possessed and interested of and in the said sum of £ , secured by the said mortgage, and assigned by the said deed-poll as aforesaid, IN TRUST for the said (*intended wife*), her executors, administrators, and assigns, until the said intended marriage shall be had and solemnized ; and from and after the solemnization thereof, then upon the several trusts, and to and for the several intents and purposes, and under and

subject to the several powers, provisós, declarations, and agreements hereinafter declared or expressed, of or concerning the same, that is to say, then, &c. (*as may be agreed upon*).

SETTLEMENTS.

MARRIAGE.

Real and
Personal.
(Concise Form.)

Trust of a Portion to which Wife was entitled on her Marriage, for her own separate Use.

“ AND WHEREAS the said (*intended wife*) was upon her marriage entitled to the sum of £ , under or by virtue of the last will and testament of, &c. and the same is now in the hands of, &c. (*or as the case may be*). Now it is hereby further witnessed and declared, by and between the parties to these presents, that the said (*trustees*) their executors, administrators, and assigns, shall stand and be possessed of and in the said sum of £ ; and that he the said (*intended husband*) doth hereby assign, transfer, and set over the said sum of £ , and all his right, title, and interest therein unto them the said (*trustees*) their executors, administrators, and assigns, upon the trusts, and to and for the ends, intents, and purposes hereinafter declared or expressed concerning the same, (that is to say) UPON TRUST, that they the said (*trustees*) and the survivor of them, and the executors, administrators, and assigns of such survivor, shall do and lay out invest the same sum of £ (with the approbation of the said (*intended wife*) to be testified by some writing under her hand), in parliamentary or public funds, or on real or government securities, at interest; and from time to time (with such approbation as aforesaid) alter and change such stocks, funds, and securities; and shall and do pay, apply, and dispose of the interest, dividends, and produce to arise by or out of the same, to such person or persons, and for such intents and purposes, and in such manner and form as she the said (*intended wife*) shall from time to time during the joint natural lives of the said (*intended husband*) and herself, notwithstanding her coverture, by any note or writing under her hand, direct or appoint, and in default of such direction or appointment, and until any such as shall be made

Trust of wife's
portion for her
own use for life.

SETTLEMENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

shall take effect, shall and do pay the said interest, dividends, and produce, or so much thereof concerning which no such direction or appointment shall be made or take effect, into the proper hands of the said (*intended wife*) for her own sole and separate use and benefit, to the intent that the same may not be subject or liable to the control, direction, debts, engagements, or incumbrances of the said (*intended husband*) but be at her own absolute and separate disposal, as if she were sole and unmarried, and the receipt or receipts of the said (*intended wife*) or of such person or persons to whom she shall from time to time direct or appoint the said interest, dividends, and produce, or any part thereof, to be paid, shall from time to time, notwithstanding her coverture, be a sufficient discharge to the trustees paying the same, for so much thereof as in such receipt or receipts shall be acknowledged or expressed to be received;

If wife survive. and in case the said (*intended husband*) shall happen to die in the lifetime of the said (*intended wife*) then upon trust that they the said trustees or trustee shall and do yearly and every year during the natural life of the said (*intended wife*) pay the interest, dividends, and produce to arise by and out of the monies so to be laid out or invested unto the said (*intended wife*) during the term of her natural life, and from and after her decease, shall and do pay, transfer, and assign the said principal monies and the stocks, funds, and securities in which the same shall be invested, unto such person and persons, and for such intents and purposes as the said (*intended husband*) by his last will and testament in writing, or any writing purporting to be his last will and testament, shall direct or appoint; and in default of such direction or appointment, unto the executors or administrators of the said (*intended husband*); and in case the said (*intended wife*) shall happen to die in the lifetime of the said (*intended husband*) then upon trust, from and after her decease, to pay, transfer, and assign the said principal monies, and the funds, stocks, and securities in which the same shall be then invested unto the said (*intended husband*) his executors and administrators. PROVIDED NEVERTHELESS, that if the said (*intended wife*) shall be desirous to

The principal to husband's appointment.

If husband survive, in part for him.

Power for wife to dispose of the principal.

dispose of the said £ , or any part thereof, either before the same shall be so laid out and invested by the said trustees, or at any time afterwards during her life, then and in every such case it shall be lawful for the said (*trustees*) and the survivor of them, and the executors and administrators of such survivor, and he and they are hereby directed and required from time to time, during the life and at the request, in writing, of the said (*intended wife*) under her hand, to pay, apply, and dispose of the said sum of £ , or any part thereof, and to sell and transfer the stocks, funds, or securities in or upon which the same shall be invested, or any part thereof, and to pay, apply, and dispose of the monies arising thereby or therefrom, or any part thereof, to such person or persons, for such intents and purposes, and in such manner as the said (*intended wife*) shall so, as aforesaid, direct and limit, and the receipt or receipts of her the said (*intended wife*) or of such person or persons to whom she shall so direct any such money or monies to be issued or paid, shall from time to time, notwithstanding her coverture, be a sufficient discharge to the trustees issuing or paying the same for so much thereof as in such receipt or receipts shall be acknowledged or expressed to be received."

SETTLEMENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

Covenant by the Husband to cause to be paid to the Wife a Sum of Money equal to her Fortune on his Decease, if she survive him, and also an Annuity for her Life.

"NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, and of the sum of £ , to the said (*intended husband*) in hand paid by the said (*wife's father*) at or before the sealing and delivery of these presents, in full for the marriage portion of the said (*intended wife*) (the receipt of which said sum of £ he the said (*intended husband*) doth hereby acknowledge), and for making a provision for the said (*intended wife*) in case the said marriage shall take effect, and she shall happen to survive the said (*intended husband*) her intended husband, he the said (*intended husband*) for himself, his heirs, exe-

Husband's executors to pay sum to wife,

SETTLEMENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

and an annuity
for her life,

and secure the
same.

cutors, and administrators, doth hereby covenant, promise, and agree to and with the said (*trustee*) his executors and administrators, that in case the said intended marriage shall take effect, and the said (*intended wife*) shall survive him the said (*intended husband*) the heirs, executors, or administrators of him the said (*intended husband*) shall and will, within six calendar months next after his decease well and truly pay or cause to be paid unto the said (*intended wife*) her executors, administrators, or assigns, the sum of £ for her and their own use and benefit; AND also shall and will, in case of her so surviving, well and truly pay or cause to be paid unto the said (*intended wife*) and her assigns, yearly and every year during the term of her natural life, one annuity or clear yearly sum of £ free and clear of, and without any deduction, defalcation, or abatement for or in respect of any taxes, charges, assessments, and impositions, now or hereafter to be taxed, charged, assessed, or imposed by authority of parliament, or otherwise howsoever, and whether the same be of the nature of those now in being, or of any other kind or nature whatsoever; the same annuity or clear yearly sum to be payable and paid at or in the common dining hall of in the county of Middlesex, by equal quarterly payments, on, &c. , in each and every year, the first payment thereof to begin and be made on such of the said days of payment as shall happen next after the death of the said (*intended husband*), together with a proportional part of the said annuity or yearly sum of £ unto the executors, administrators, or assigns of her the said (*intended wife*) for the time which shall elapse between the quarterly day of payment next preceding the decease of the said (*intended wife*) and the day or time of her decease. AND further that the said (*intended husband*) shall and will by deed, or by last will and testament in writing, duly published and executed, well and legally secure the payment of the said sum of £ , and the said annuity or yearly sum of £ , respectively unto the said (*intended wife*) her executors, administrators, and assigns, at the times, and in the manner hereinbefore mentioned, by making the

same a specific lien or charge upon the whole, or a sufficient part in value of the real and personal estates of him the said (*intended husband*), and with proper and effectual powers and remedies for recovering the same respectively.

AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the premises, it is hereby declared and agreed by and between the parties hereto, and particularly the said (*intended husband*) for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said (*father*) his executors and administrators, that in case the said intended marriage shall take effect, and the said (*father*) shall die intestate as to the whole or any part of his personal estate, the said sum of £ so paid to the said (*intended husband*) by the said (*father*) as and for the marriage portion of the said (*intended wife*) as aforesaid, shall in case the same shall be equal to or exceed the part, share, or proportion of her the said (*intended wife*), in or out of the personal estate and effects of which the said (*father*) shall so die intestate, be deemed, construed, and taken to be in full payment and satisfaction of all and every the share, part, or proportion which she the said (*intended wife*), or the said (*intended husband*) in her right, can or may, or could or might, upon or after the decease of the said (*father*), have, claim, or demand of, in, or out of all or any of the personal estate, of which he the said (*father*), shall so die intestate, by virtue of or under the statutes for the distribution of intestate's effects, or any of them, or otherwise howsoever; but if the said sum of £ shall be less than the part, share, or proportion of her the said (*intended wife*), into or out of such personal estate and effects of the said (*father*), in the event of his dying intestate, as aforesaid, then such sum of £ shall be deemed, accounted, and taken only in part payment and satisfaction of such part, share, and proportion, unless the said (*father*) shall otherwise declare or direct, by some writing under his hand."

SETTLEMENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

Provision to be
in part of resi-
duary estate of
the wife's father.

SETTLEMENTS.*Directions to raise, out of settled Monies, a Sum for the Wife's Appointees.***MARRIAGE.**

*Real and
Personal.
(Concise Form.)*

Trust to raise a sum out of settled monies for wife's appointees.

“AND in case there shall not be any child of the body of the said (*intended husband*) on the body of the said (*intended wife*) begotten, or there being such, all and every daughter and daughters shall depart this life under the age of twenty-one years, not having been married, and all and every son or sons shall depart this life under the age of twenty-one years, then the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, shall stand and be possessed of and interested in the said sum of £ , or so much thereof of which no such direction or appointment shall have been made, or such part thereof as shall not have been sooner applied as aforesaid, upon the trusts following, (that is to say), IN TRUST, that they the said (*trustees*) or the survivors or survivor of them, or the executors or administrators of such survivor, after the decease of the said (*intended wife*), shall and do by calling in a competent part of the said £ , or making sale thereof, levy and raise the sum of £ , and pay the same unto such person or persons, at such time or times, in such parts, shares, and proportions, and in such sort, manner, and form, and subject to, with and under such powers, provisos, conditions, limitations, and restrictions as the said (*intended wife*) whether covert or sole, and notwithstanding her intended coverture, by any deed or deeds, writing or writings, to be by her sealed and delivered in the presence of two or more credible witnesses, or by her last will and testament in writing, or any writing purporting to be her last will and testament, to be by her signed and published in the presence of the like number of witnesses, shall declare, direct, or appoint. And in default of such last-mentioned declaration, direction, or appointment, then to pay the same sum of £ unto the next of kin of her the said (*intended wife*).”

Trust to raise, out of a Term of Years, a Sum to be subject to the Wife's Appointment.

SETTLEMENTS.

“AND UPON FURTHER TRUST, that they the said (*trustees*) and the survivor of them, his executors, administrators, and assigns, shall and do from and after the decease of the said (*intended wife*) in case she shall so direct or appoint by her last will and testament, or any writing purporting to be her last will and testament, to be by her signed, sealed, and published in the presence of three or more credible witnesses, but not otherwise, raise and levy by sale or mortgage of the premises comprised in the said term of years, or of a competent part thereof, for all or any part of the same term, or by or out of the rents and profits of the same premises, or by all or any of the said ways and means, any sum or sums (not exceeding in the whole the sum of £) of lawful money of Great Britain, and pay the same unto such person and persons, and for such intents and purposes as she the said (*intended wife*), notwithstanding her coverture, shall by such her last will and testament as aforesaid direct, limit, and appoint.”

MARRIAGE.

Real and Personal.
(Concise Form.)

Trust to raise sum for wife out of a term.

Trusts of a Term to raise Portions for the Children of a future Marriage by the Wife.

“AND as to, for, and concerning the said term of years hereinbefore limited, to the said (*trustees*), it is hereby declared and agreed by and between the parties to these presents, that the same is so limited to them, upon the trusts, and for the intents and purposes, and with, under, and subject to the powers, provisos, declarations, and agreements hereinafter declared or expressed concerning the same, (that is to say) in case the said (*intended wife*) shall have no son by the said (*intended husband*), who shall live to attain the age of twenty-one years, or leave lawful issue of his body living at his decease, or born within due time afterwards, then UPON TRUST that they the said (*trustees*) and the survivor of them, his executors or administrators, or other the trustees or trustee of the said term for the time being do and shall raise such portion or portions for the

Trust to raise portions for children of a future marriage.

SETTLEMENTS.

MARRIAGE.

*Real and
Personal.
(Concise Form.)*

daughter and younger sons of the said (*intended wife*) by any future husband whom she may happen to marry after the decease of the said (*intended husband*) as hereinafter is mentioned, (that is to say), in case there shall be issue of the said (*intended wife*) by any after taken husband, an eldest or only son and one other child, or one only daughter and no son, THEN UPON TRUST, that they the said trustees or trustee do and shall after the decease of the said (*intended wife*), by demise, sale, or mortgage of the said premises, or of a competent part thereof, for all or any part of the said term of years, or by such other ways and means as to the said trustees or trustee shall seem meet, raise and levy or borrow and take up at interest the sum of £ of lawful money of Great Britain, for the portion of such one child, not being an eldest or only son as last-mentioned; and in case there shall be issue of the said (*intended wife*) by such after taken husband an eldest or only son and two other children, or two daughters only and no son, THEN UPON TRUST, that they the said trustees or trustee do and shall after the decease of the said (*intended wife*), by the ways and means aforesaid, raise and levy, or borrow and take up at interest the sum of £ of like lawful money, for the portions of such two children (or other than and besides an eldest or only son, as the case shall happen); and in case there shall be issue of the said (*intended wife*) by any such after taken husband as aforesaid, an eldest or only son, and three or more other children, and three or more daughters only and no son, THEN UPON TRUST, that they the said trustees or trustee do and shall, after the decease of the said (*intended wife*), by ways and means aforesaid, levy and raise, or borrow and take up at interest, the sum of £ , of like lawful money, for the portions of such three or more children, other than or besides an only son, as the case shall happen. AND it is hereby declared and agreed by and between the said parties hereto, that the said sum of £ , or £ , or £ , (as the case may be) so to be raised and levied as and for the portion or portions of such child or children of the said (*intended wife*) by such after taken husband, (other than and

except an eldest or only son as aforesaid) shall be paid and payable to such only child, or between or among all such children, (other than and except an eldest or only son for the time being as aforesaid) at such time or times, and if more than one," &c. &c. (*as husband and wife or survivor shall appoint, or as otherwise agreed, (see ante, p. 332, and post, pp. 549, 560).*)

SETTLE-
MENTS.

MARRIAGE.

Real and
Personal.
(Concise Form.)

Provision for Children of the present Marriage in Case of a second Marriage of the Wife.

"PROVIDED ALWAYS, and it is hereby declared and agreed by and between the parties to these presents, that in case the said (*intended wife*) shall happen to survive the said (*intended husband*), and shall marry after his decease, and there shall be any child or children of the said (*intended husband*), on the body of the said (*intended wife*) begotten, then living, then that they the said (*trustees*) and the survivor of them, and the executors, administrators, and assigns of such survivor, do and shall from time to time during the joint lives of the said (*intended wife*), and of any such child or children, with or out of the interest, dividends, and annual produce of the said several before-mentioned sums, pay for and towards the maintenance, education, and support of such child or children, such yearly sum or sums as hereinafter is mentioned (that is to say) if there be only one child, the yearly sum of £ , or if there be two such children and no more, the yearly sum of £ , and in case there shall be three or more such children, then the whole of the said interest, dividends, and annual produce to be applied for or towards the maintenance and education of such three or more children, in such manner as the said trustee and trustees for the time being shall think proper, the said payments and applications to commence and take place immediately upon such the after marriage of the said (*intended wife*)."

Monies to be applied for maintenance of children of present marriage, if wife marry again.

* * * See other additions and variations, *ante*, No. II. p. 401, Other variations. *et seq.*

SETTLE-
MENTS.

MARRIAGE.

Leaseholds.

No. V.

*Marriage Settlement of Leasehold Premises and
Chattel Interests, the Property of the Husband.**Variations where they are the Property of the Wife.**Where they are holden for Lives and renewable.**Where for Years determinable upon Lives.**Where Part of the settled Property is Money in the
Funds and other Personalty, &c. (1).*

THIS INDENTURE, of three parts, made the
day of in the year of the

Notes and
variations.

(1) For notes and variations on such parts of the above precedent, to which none are subjoined, see those added to No. II. (*ante*, p. 281, *et seq.*)

Leaseholds.

† Where a leasehold for years is to be settled, it must be assigned to trustees in trust [if it be a renewable lease out of the rents or by mortgage to renew the same, and subject thereto in trust] for the husband and wife successively, not during their lives absolutely, (because a life estate is supposed in law to be a greater interest than the longest term) but during so many years as they or either of them shall live, and after the death of the survivor, in trust for such son of the marriage as shall first attain the age of twenty-one years, and if there be no son, in trust for daughters, with benefit of survivorship (if more than one) in case of death under twenty-one, as in other cases.

reign, &c. and in the year of our Lord
BETWEEN (*the intended husband*) of, &c.

. SETTLE-
MENTS.
of

MARRIAGE.

Leaseholds.

Leaseholds being incapable of being intailed, it is proper to declare that they shall vest in the son who first attains twenty-one; for if they were settled in the same words as are used for freehold lands, the whole would vest in the eldest son immediately on his birth, and if he should die under twenty-one, would go to his personal representatives, and not to the other children, unless they should take as next of kin; it being a rule that whenever such an interest becomes vested in chattels or personal estate, as in real property would be an estate tail, all subsequent limitations are void.

Where the property consists of money upon mortgage, bond, or the like, the securities must be recited in intended settlement; but the mortgage should be transferred to the trustees by a separate deed, with an assignment to them of the mortgage money, who by such deed must be declared to stand possessed thereof upon the trusts of the settlement (and it is usual to add a declaration that their receipt for the principal money and interest shall be sufficient). By this means the trusts are not exposed, and upon payment of the money, the transfer of the mortgage may be delivered up to the owner of the estate. And in the settlement itself the trustees are to be declared to stand possessed of the mortgage monies assigned to them by such separate deed, and of the money due on bond, &c. which (although not the money due on mortgage), must be assigned to them by the settlement, in trust for the husband or wife, his or her executors, &c. until the marriage, and afterwards in trust, either to continue the same on the present securities, or with the consent of the parties to call in and place the same out again on new securities, and to pay the interest to the husband for life; and if the property be the wife's, it is usual to declare, that in case she survive, it shall be in trust for her, and if she die in his lifetime, in trust for the children in the usual manner; or a power of appointment may be and often is reserved to the husband and wife jointly by deed, and the survivor of them by deed or will, to appoint the trust money among their children in such

Money on mort-
gage.

SETTLEMENTS.

MARRIAGE.

Leaseholds.

Recital of lease.

the first part, (*the intended wife*) of, &c. of
 the second part, and (*the trustees*) of, &c. ,
 trustees appointed for the purposes hereinafter
 mentioned, of the third part. WHEREAS a mar-
 riage hath been agreed upon and is intended to
 be shortly had and solemnized between the said
 (*intended husband*) and (*intended wife*). AND
 WHEREAS by an indenture of demise or lease, bear-
 ing date on or about the day of , which
 was in the year , and made or expressed
 to be made between A. B. (*the lessor of the pre-
 mises*) of the one part, and the said (*intended hus-*

shares as they shall think proper ; a power is also generally given
 to the trustees with the consent of husband and wife, or the
 survivor of them, to lay out the trust money in land, which is,
 nevertheless, to be deemed as personal estate, for it would be
 improper to alter the nature of a trust fund, and it is a rule
 that the acts of trustees shall not alter or vary the interest of
 the parties. This power to lay out the money in lands, parti-
 cularly where there are younger children, and where the trusts
 may be of long duration, is of great use, by way of bettering, as
 well as securing, the trust funds.

Stock.

If stock (*i. e.* bank annuities) be to be settled, as it will not
 (regularly speaking) pass by an assignment by deed, but only
 by transfer in the Bank books, the party to whom it belongs
 enters into a covenant with the trustees so to transfer it: and
 the trustees are declared to stand possessed thereof upon such
 and such trusts.

Husband in
business.

If the husband be in business, he usually has paid to him a
 part of the wife's money, and covenants to pay an equal or
 greater sum to the trustees in the settlement, which in that case
 is settled along with the wife's property upon the children in the
 way agreed on. The provisions referred to will be found *post*.

band) of the other part ; the said A. B. demised and leased unto the said (*intended husband*) his executors, administrators, and assigns, ALL (1), &c. To HOLD (2) the same with the appurtenances unto the said (*intended husband or other lessee*) his executors, administrators, and assigns, from the
day of then last past, for the term or period of years to be then next ensuing, under and subject to the yearly rent of £ , and the several covenants, provisos, and agreements therein contained, which on the part of the said (*intended husband*) his executors, administrators, and assigns, is or are thereby required to be paid, performed, or observed, respectively. [AND WHEREAS, &c. (*recite, in the usual way, the assignment of the lease to the intended husband, if he were not the lessee*) (3).] AND

SETTLE-
MENTS.

MARRIAGE.

Leaseholds.

Recital of wife's personal property.

(1) Insert here an exact description of the premises from the lease, or refer to them in the operative part of the assignment, as,

Parcels.

“ The several messuages, or tenements and premises hereinafter described.”

(2) If the lease be for years determinable upon lives, say,

Years determinable upon lives.

“ TO HOLD the same, with the appurtenances, unto the said (*intended husband*) his executors, administrators, and assigns, from the day of then last past, for the term or period of years to be thence next ensuing, if (*the nominees*) therein named, or any or either of them, should so long live, under and subject to the yearly rent,” &c. *as above*.

(3) If the intended husband be possessed of a moiety or other portion only of the premises, recite here the deed or will under which he claims, as in Vol. III. No. LXXIV. p. 197.

Moiety, &c.

SETTLE-
MENTS.

MARRIAGE.

Leaseholds.

WITNESS, that
in consideration
of the marriage,

WHEREAS the said (*intended wife*) is, or upon the day of her marriage will be entitled to the sum of £ , and other personal estate and effects, which it hath been agreed shall, upon the solemnization of the said intended marriage, become the sole property of the said (*intended husband*) as the marriage portion of the said (*intended wife*), notwithstanding his decease in her lifetime, (in case the same shall happen) before he shall have reduced the same into actual possession (1). AND WHEREAS the said (*intended husband*) for the purpose of making some provision for the said (*intended wife*), in case she shall survive him, and also for the issue, if any, of the said intended marriage, hath agreed to settle and assure the messuages or tenements and premises comprised in the said indenture of lease, upon the trusts and in the manner hereinafter expressed. Now THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the said intended marriage, and of the marriage portion and other the monies and effects of the said (*intended wife*) to which the said (*intended husband*) will become entitled on the solemnization of the said intended marriage, and

Choses in action,
&c. belong to
wife surviving.

(1) Choses in action, outstanding debts, and also chattel interests of the wife, will, if she survive her husband, belong to herself, and not to his representatives, unless he dispose of or exercise some act of ownership over them in his lifetime; see *Brotherow v. Hood*, 2 Com. Rep. 725; *Turner's case*, 1 Vern. 7; *Pitt v. Hunt*, *ib.* 18; *Tudor v. Samyne*, 2 *ib.* 270; *Bates v. Dandy*, 2 Atk. 207.

for making a provision for the said (*intended wife*) in case the said marriage shall take effect, and she shall survive the said (*intended husband*), and for the issue, if any, of the said intended marriage, [and also for and in consideration of the sum of ten shillings of lawful and current money of that part of the United Kingdom of Great Britain and Ireland called England, to the said (*intended husband*) in hand well and truly paid by the said (*trustees*) at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged] HE the said (*intended husband*) HATH bargained, sold, assigned, transferred, and set over, and by these presents DOTH bargain, sell, assign, transfer, and set over unto the said (*trustees*) their executors, administrators, and assigns, ALL (1) those the said several messuages or tenements, pieces or parcels of ground (*or as the case may be*) and all and singular other the premises comprised in and expressed to be demised by the hereinbefore in part recited indenture of lease, of the day of , [and so assigned and transferred to him the said (*intended husband*) by the said hereinbefore in part recited indenture of assignment, of the day of],

SETTLEMENTS.

MARRIAGE.

Leaseholds.

the intended husband assigns

Parcels.

(1) If the assignment be of a moiety or other portion only of the premises, say, *Moiety, &c.*

“ALL that full undivided moiety or half part (*as the case may be*) the whole into two equal moieties or half parts being considered as divided, of and in ALL,” &c. *as above.*

**SETTLE-
MENTS.****MARRIAGE.*****Leaseholds.***

To HOLD to the
trustees for the
residue of the
term.

as hereinbefore is mentioned, with all and every the rights, members, easements, advantages, and appurtenances to the same premises belonging, or therewith, or with any part thereof, now or usually holden, occupied, or enjoyed; together with the said hereinbefore in part recited indenture of lease [and of assignment respectively], and all benefit and advantage of the same, and of all and every the covenants, clauses, provisos, and agreements therein contained, which on the part of the lessor or landlord of the same premises are to be performed or observed; and all the estate, right, title, interest, term, and number of years now to come and unexpired, property, claim, and demand whatsoever, both at law and in equity, of him the said (*intended husband*) of, in, to, or out of the same premises, or any part thereof, under or by virtue of the said indenture of lease [and of assignment,] or otherwise howsoever. To HAVE AND TO HOLD the said (1) messuages or tenements,

Moiety, &c.

(1) If the assignment be of a moiety or other portion only of the premises, say,

“To HAVE AND TO HOLD the said undivided moiety or half part, the whole into two equal moieties or half parts being considered as divided, of and in the said messuages or tenements,” &c. *as above*.

Lease for years
determinable
upon lives.

If the lease be for years determinable upon lives, say,

“To HAVE AND TO HOLD the messuages or tenements, pieces or parcels of ground, and all and singular other the premises hereby assigned or otherwise assured or intended so to be, with their and every of their respective rights, privileges, easements, appendages, and appurte-

pieces or parcels of ground, and all and singular other the premises hereby assigned, or otherwise assured or intended so to be, and every part or parcel of the same, with their and every of their respective rights, members, easements, advantages, and appurtenances, unto the said (*trustees*) their executors, administrators, and assigns, from henceforth for and during the residue or remainder of the said term of years in and by the said indenture of lease granted, which is or may be yet to come and unexpired by effluxion and computation of time, and in such and the same or the like manner, and as beneficially to all intents and purposes as the said (*intended husband*) now holds and enjoys, or at or immediately before the sealing and delivery of these presents, held or enjoyed the same; SUBJECT only to the payment of the yearly rent in or by the same indenture of lease reserved, and to the performance and observance of the several covenants, clauses, provisos, and agreements therein contained, to be henceforth paid, performed, or observed by the tenants or assignees of the same premises, for or in respect thereof; BUT UPON THE TRUSTS nevertheless, and for the several ends, intents, and pur-

SETTLEMENTS.

MARRIAGE.

Leaseholds.

Subject to the rents and covenants in the lease.

Upon the trusts after mentioned.

nances unto the said (*trustees*) their executors, administrators, and assigns, from thenceforth for and during all the residue and remainder of the said term or period of years yet to come and unexpired, if they the said (*nominees*) or any or either of them shall so long live; SUBJECT nevertheless," &c. as above.

power him and them to have, receive, and take the rents, issues, and profits thereof, and of every part thereof, during the residue which shall be then to come of the said term of years, if he the said (*intended husband*) shall so long

SETTLE-
MENTS.

MARRIAGE.

Leaseholds.

that purpose, *Lamb v. Milmes*, 5 Ves. 517. If, therefore, the property be the wife's, or if (for other reasons) it be intended to be given to her for her sole use independently of her husband, say,

“ IN TRUST for and to pay the rents, issues, and profits thereof, into the proper hands of and for the sole use of the said (*intended wife*) for and during the residue and remainder which shall be then to come of the said term of years, if she the said (*intended wife*) shall so long live, separately and apart from and exclusively of the said (*intended husband*) her intended husband, and so and in such manner that the same may not be within or under his control, or subject or liable to his debts, contracts, or engagements, and for that purpose it is hereby declared and agreed, that the receipt and receipts in writing of her the said (*intended wife*) alone, and of her only, for all or any of the rents and proceeds of the said premises, shall from time to time, notwithstanding her coverture, and any assignment or disposition of the same, be a good and sufficient release; acquittance, and discharge, and good and effectual releases, acquittances, and discharges for the money which shall be then actually due and payable, and thereby expressed to be received; and so also and to the intent that the said (*intended wife*) shall not nor may anticipate, charge, or assign all or any part of the said rents, issues, and proceeds, until the same shall actually become due and payable, nor authorise or empower any person or persons whomsoever to receive the same, otherwise than for her own sole and proper use and benefit.”

Wife for her
sole use.

That a clause in restraint of anticipation is valid, see *Jackson v. Hobhouse*, 2 Mer. 483.

SETTLEMENTS.

MARRIAGE.

Leaseholds.

Wife for life.

live (1), to and for his and their own sole and proper use and benefit; and from and after the decease of the said (*intended husband*) during the continuance of the said term, IN TRUST to permit and empower the said (*intended wife*) his intended wife, in case she shall be then living, and her assigns, to have and receive the rents, issues, and profits of the said premises during the residue which shall be then to come of the said term of years, in case she shall so long live (2);

Bankruptcy of husband.

(1) If the intended husband be in trade, and the property be the wife's, it may be prudent to settle it upon the wife 'in the event of his bankruptcy, (see *ante*, No. III. p. 448, n. (1)), in which case say,

“For and during the residue which shall be then to come of and in the said term of years, if he the said (*intended husband*) shall so long live, or until he shall commit an act of bankruptcy within the meaning of any statutes made or to be made in relation to bankrupts, whereon a commission shall issue, and he shall be so found or declared a bankrupt, or until he shall make any composition with his creditors for the payment of his debts, although a commission of bankruptcy shall not issue against him, or until he shall make any assignment of his effects for the benefit of his creditors, which shall first happen; and from and after the decease of the said (*intended husband*), during the continuance of the said term, or his committing any act of bankruptcy, or his being found and declared a bankrupt, or making any such composition or assignment as aforesaid, THEN IN TRUST to permit and empower the said (*intended wife*),” &c. *as above*.

Limitation of leaseholds.

(2) A term may be limited for any number of lives in being, and twenty-one years and a few months (including the time of gestation) afterwards, but not longer; *Thelluson v. Woodford*, 4 Ves. jun. 332; and see the accumulation act, 39 and 40 Geo. III. c. 9, *post*, Class VIII. No. I. in note.

and from and after the decease of the survivor of them the said (*intended husband*) and (*intended wife*) his intended wife, during the said term, UPON TRUST that they the said (*trustees*) and the survivor of them, and the executors and administrators of such survivor, and their or his assigns, do and shall pay and apply so much of the rents and proceeds of the same premises as shall be requisite, in or for payment of the rent or rents, reserved or made payable in or by the lease or leases whereby the same are or shall be holden; and in or for keeping such parts thereof as shall or may consist of messuages or buildings, in good and tenantable repair; and in performing other the covenants and agreements in the said leases, or any of them, contained, which on the part of the tenants or assignees thereof is or are required to be performed; and also in or for insuring the same premises against loss or damage by fire in some respectable insurance office within the cities of London or Westminster; and do and shall apply the money which shall be received by him or them on account of such insurance, in repairing or rebuilding such part or parts of the said premises respectively as shall have been destroyed or damaged by fire; AND UPON THIS FURTHER TRUST, that they the said (*trustees*) and the survivor of them, and the executors and administrators of such survivor, and their and his assigns, do and shall assign and assure the said messuages or tenements, pieces or parcels of ground and premises, for all the residue of the said term then to come

SETTLEMENTS.

MARRIAGE.

Leaseholds.

After the decease of survivor.

In trust for such children, &c. as husband and wife shall appoint.

SETTLEMENTS.

MARRIAGE.

Leaseholds.

therein respectively, and pay and apply the residue or surplus of the rents, issues, and proceeds thereof respectively, after such payments as aforesaid, unto or for the benefit of all and every or any one or more, to the exclusion (1) of any other or others of the child or children, or grandchild or grandchildren (2), or other issue, if any, of the said intended marriage, (such grandchildren or other issue being respectively born before the appointment hereinafter mentioned shall have been made to them respectively) for such estate and estates, or interest and interests, and in such parts, shares, and proportions, if more than one, and in such manner and form, and subject to such charges and payments to any one or more of such child or children, or grandchild or grandchildren, or other issue respectively, and to vest and be transferred and assigned, and the rents and profits thereof be payable and paid at such age or ages, and days or times, and upon such contingencies,

Exclusive
appointment.

(1) A power to appoint to and amongst the children of the marriage in such shares and proportions, &c. as the appointor shall think proper, will not empower him to appoint to any one or more of the children to the exclusion of the others of them, unless it be so expressly declared. See *Alexander v. Alexander*, 2 Ves. 640; *Kemp v. Kemp*, 5 Ves. jun. 849; and *ante*, p. 335, n. (1).

Grandchildren
not included in
power of ap-
pointment to
children.

(2) As it is now fully settled that a power to appoint to children cannot be exercised in favour of grandchildren, or the issue of such children; *Brudenell v. Elives*, 1 East, 442, 7 Ves. jun. 382, S. C.; *Butcher v. Butcher*, 9 *ibid.* 382; and as it frequently happens, that such issue have more occasion for the appointor's beneficence than their parents, care should be taken to extend the power to this subject; and see *ante*, p. 335, n. (2).

and with and under such restrictions and conditions, and with such powers, directions, and regulations for maintenance, education, and advancement, as the said (*intended husband*) and (*intended wife*) his intended wife, at any time or times during their joint lives, in and by any deed or deeds, writing or writings, to be by them sealed and delivered in the presence of and attested by two or more credible witnesses, shall either absolutely and irrevocably, or with a power or powers of revocation and new appointment, (such new appointment being to or in favour of some one or more of the said children, grandchildren, or other issue, if any, and if not, then of the person or persons who shall or may be entitled in default thereof under the provisions hereinafter contained), jointly direct or appoint; and in default of such direction or appointment, and as to such part of the said premises whereof no such direction or appointment shall be made or given, and in case any such shall be made or given and take effect, then when and as the estates and interests thereby directed or appointed shall respectively end and determine, (and subject thereto, in the meantime), Then unto or for the benefit of all and every or such one or more child or children, or grandchild or grandchildren, or other issue of the said intended marriage, (such grandchild or grandchildren, or other issue being respectively born before the appointment hereinafter mentioned shall have been made to them respectively), for such estate or estates, interest or interests, and in

SETTLE-
MENTS.

MARRIAGE.

Leaseholds.

In default of joint appointment, as survivor shall appoint.

**SETTLE-
MENTS.**

MARRIAGE.

Leaseholds.

such parts, shares, and proportions, if more than one, and such manner and form, and subject to such charges and payments to any one or more of such child or children, or grandchild or grandchildren, or other issue respectively, and to vest and be transferred and assigned, and the rents, issues, and profits thereof be payable and paid at such age or ages, and days and times, and with and under such restrictions, limitations, and powers, with or without power of revocation, and under such directions and regulations for maintenance, education, and advancement as the survivor of them the said (*intended husband*) and (*intended wife*) his intended wife, after the death of the other of them, and as to the said (*intended wife*) whether she shall be then sole or covert with any future husband), shall by any deed or instrument in writing, with or without power of revocation and new appointment, (such new appointment being to or in favour of such child or children, or grandchild or grandchildren, or other issue, if any, and if not, to or for such other person or persons as aforesaid) to be by him or her sealed and delivered in the presence of, and attested by two or more credible witnesses, or by his or her last will and testament in writing, or any codicil or codicils thereto, or any writing or writings purporting to be or being in the nature of his or her last will and testament, or any codicil or codicils thereto, to be by him or her signed and published in the presence of, and attested by three or more credible witnesses, shall direct or

appoint; and in default of such direction or appointment of or by the said (*intended husband*) and the said (*intended wife*), or of or by the survivor of them, and as to such part of the said premises of which there shall be no such direction or appointment, and until any such direction or appointment shall take effect, and subject to the estates and interests which shall have been so directed or appointed, UPON TRUST (1) that they

SETTLEMENTS.

MARRIAGE.

Leaseholds.

In default of appointment, to the children equally.

(1) If it be intended that the estate should be sold and divided amongst the children on the decease of the surviving parent, (which is frequently more beneficial to them) instead of the distribution directed in the text, say,

In default of appointment, trustees to sell.

“UPON TRUST that they the said (*trustees*) or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his assigns, do and shall, as soon as conveniently may be after the decease of the survivor of them the said (*intended husband*) and (*intended wife*), make sale and dispose of the said premises, either together or in parcels, and either by public sale or private contract, for the best price or prices in money that in the opinion of such trustees or trustee can be reasonably obtained or expected for the same, with full power to sign, seal, and deliver all proper and sufficient assignments and other assurances of the said premises, to any purchaser or purchasers thereof, their or his executors, administrators, or assigns, or otherwise as he or they shall direct in that behalf; and also to sign and give receipts for the sum and sums for which the same or any of them shall be so sold or disposed of; all and every of which receipt and receipts, when duly signed by the said trustees or any two of them, or by the only acting trustees or trustee for the time being, shall respectively be good and sufficient discharges to the purchaser or purchasers of the said premises, or of any part thereof, and his, her, or their executors, administrators, and assigns, for so much of the purchase or consideration

SETTLE-
MENTS.

MARRIAGE.

Leuscholds.

And divide the
purchase-money
amongst the
children of the
marriage.

Proviso of sur-
vivorship be-
tween the
children.

the said (*trustees*) and the survivor of them, and the executors and administrators of such survivor,

money as shall therein be acknowledged or expressed to be received; and such purchaser or purchasers, and his, her, and their executors or administrators, or other person or persons to whom the same premises or any part thereof shall be assigned or assured in pursuance of these presents, shall not afterwards be answerable or accountable for any loss, mis-application, or non-application of the same, or any part thereof. AND it is hereby agreed and declared, that the said (*trustees*) and the survivors and survivor of them, and the executors or administrators of such survivor, and their or his assigns, shall stand possessed of and interested in the monies to arise by any such sale or sales as aforesaid, IN TRUST (after payment of all expenses attending any such sale or sales, and other the execution of the aforesaid trusts, and all arrears of rents and taxes up to the last quarter-day next preceding), to pay and divide the residue of the said monies unto and equally between all and every the children and child of the said (*intended husband*) by the said (*intended wife*) his intended wife, as tenants in common, and their respective executors, administrators, and assigns, if more than one, share and share alike; and in case there shall be but one such child, then unto such one or only child, and his or her executors, administrators, or assigns, the part or share, or parts or shares of such of them as shall be a son or sons, to be payable and paid at his or their age or respective ages of twenty-one years; and the part or share, or parts or shares of such of them as shall be a daughter or daughters, at her or their age or respective ages of twenty-one years, or day or days of marriage, which ever shall first happen, in case the survivor of them the said (*intended husband*) and (*intended wife*) shall be then dead; but if either of them shall be living, then as soon as conveniently may be after his or her decease. PROVIDED ALWAYS, that if any child or children, being a son or sons, shall depart this life under the age of twenty-

and their or his assigns, do and shall assign and assure the said messuages or tenements, pieces or

SETTLE-
MENTS.

MARRIAGE.

Leaseholds.

one years, or being a daughter or daughters, shall depart this life under that age and unmarried, then the part or share and parts or shares of him, her, or them so dying, shall go and accrue to the survivors or survivor of such children, to be equally divided between or amongst them all, if more than one, share and share alike; and if but one, then to such only surviving child, to be payable and paid to him, her, or them, at such days and times, and in such manner as his, her, or their original share or shares is or are hereinbefore directed to be payable and paid; and in case of the death of any more or other of the said children, before such accruing or surviving part or share, or parts or shares, shall become payable, then such accruing part or share, or parts or shares, shall be subject and liable to the same or the like accruer to the survivors or survivor of such children as is hereby declared relative to his, her, or their original part or share, or parts or shares. PROVIDED, &c. (*issue of children to have the parent's share, as post, p. 559*).

AND UPON FURTHER TRUST, that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their and his assigns, do and shall in the meantime, and until the said portion and portions shall become payable, lay out and invest the money arising from such sale or sales as aforesaid, in their or his names or name, in the purchase of 3 per cent. consols, Bank annuities, or in some one or more of the public stocks or funds of the United Kingdom, or on other government or real securities, at their or his discretion, and from time to time alter and transpose such securities or funds as and when it shall be deemed expedient; they and each of them trustees standing and being at all times possessed of such stocks, funds, and securities, upon the same or like trusts, for the same or the like intents and purposes, and under the same or like directions as

Power to invest
purchase-money
on securities in
the meantime.

SETTLEMENTS.

MARRIAGE.

Leaseholds.

Power of applying interest of portions for maintenance and education.

And part of portions for advancement in life.

Default of children, in trust for husband.

parcels of ground and premises, for all the residue of the term or terms which shall be then to come

are hereinbefore declared or expressed of or concerning the monies with which such purchases or investments respectively were or was made. AND UPON THIS FURTHER TRUST, that they the said (*trustees*), and the survivors and survivor of them, and the executors or administrators of such survivor, and their or his assigns, shall and do in the meantime, until the share or shares of such child or children of and in the said monies, funds, or securities, shall become payable or transferrable, pay and apply all or any part of the interest, dividends, and annual proceeds of their respective shares or presumptive shares, for or towards the maintenance and education of such child or children, in such manner as they the said trustees or trustee shall in their or his discretion think proper; and do and shall permit and suffer the surplus or residue, if any, of the same interests, dividends, and produce to accumulate for the benefit of the person or persons who for the time being shall be entitled thereto under or by virtue of these presents. PROVIDED ALSO, and it is hereby further agreed and declared, that it shall be lawful for the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of the survivor, and their and his assigns, to pay or apply any part or parts of the share or shares, or presumptive share or shares of any such child or children as aforesaid, for the putting or placing him, her, or them, to or in any trade, business, profession, or employment, or otherwise for his, her, or their preferment or advancement in the world, notwithstanding he or they shall not then have attained his or their age or respective ages of twenty-one years, being a son or sons, or that age, or be married, being a daughter or daughters. PROVIDED ALWAYS, and it is hereby lastly agreed and declared by and between the said parties, that in case all and every of the children of the said (*intended husband*) by the said (*intended wife*), being a son or sons, shall depart this life under the age of twenty-

therein respectively, and pay and apply the rents, issues, and profits thereof, which shall become due after the decease of the survivor of them the said (*intended husband*) and (*intended wife*), unto, between, and amongst all and every the children of the said intended marriage (1), if there shall be more than one, equally to be divided between them, share and share alike, as tenants in com-

SETTLE-
MENTS.

MARRIAGE.

Leaseholds.

one years, and being a daughter or daughters shall depart this life under that age, and without having been married, then that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their or his assigns, shall stand and be possessed of the monies arising by any such sale or sales of the said premises, as aforesaid, and the accumulated dividends and interest thereof, if any, IN TRUST for the executors, administrators, and assigns of the said (*intended husband*), to and for their own proper use and benefit respectively, and for or upon no other trust, intent, or purpose whatsoever."

(1) If it be intended that chattel property should be so limited as to give to the first and other sons in succession an estate in the nature of an estate tail, and at the same time prevent the first taker having an absolute ownership over the estate, by its vesting in him immediately upon his birth, it may be assigned to the trustees, IN TRUST for the first and other sons, in the usual manner (see *ante*, pp. 307, 313), with a proviso that the estate shall continue according to such limitation until some one of them shall attain the age of twenty-one years, OR IN TRUST for such son as shall first attain the age of twenty-one years, with a declaration that the eldest, for the time being, of the sons shall be entitled to the rents and profits until he attain that age, but as the first mode gives all the sons an equal capacity of taking a vested interest as soon as *in esse*, and the right to the rents and profits will follow such interest, that seems the better mode, and see *ante*, p. 538, n. (+).

Intail of chattels.

SETTLE-
MENTS.

MARRIAGE.

Leaseholds.

Benefit of sur-
vivorship be-
tween them.

mon, and to their respective executors, administrators, and assigns; and if there shall be but one such child, then unto such only child, his or her executors, administrators, or assigns; and which said premises shall vest in such of the said children respectively as shall be a son or sons, at his or their age or respective ages of twenty-one years, and in such of them as shall be a daughter or daughters at the same or like age, or upon her or their marriage or respective marriages which shall first happen, and be assigned and transferred to them respectively, at the same ages or times if the said (*intended husband*) and (*intended wife*) shall be then dead, but if they or either of them shall be then living, then immediately upon the decease of the survivor of them. AND UPON THIS FURTHER TRUST, that in case there shall be more than one child of the said intended marriage, and any or either of them being a son or sons, shall die under the age of twenty-one years, or being a daughter or daughters shall die under that age, without having been married, then they the said (*trustees*) and the survivor of them, and the executors and administrators of such survivor, and their or his assigns, do and shall assign and transfer the part or share, or parts or shares of or in the said premises, which, under the trusts hereinbefore contained, would have belonged to the child or children respectively, who shall so die as aforesaid, in case he or they had lived to the age or time aforesaid, and also such other part or share, or parts or shares of or in the same

premises, as from time to time shall or may presumptively belong to the same child or children respectively so dying as aforesaid, by accruer or survivorship under this present provision; and also the accumulations, if any, of the rents, issues, and profits arising from the share or shares of the child or children so dying as aforesaid, unto the other or others of the same children or child, to be equally divided between them, if more than one, share and share alike, as tenants in common, and his, her, or their executors, administrators, and assigns; and in case all of the said children but one shall die under the age or before the time aforesaid, then unto such only surviving child, and his or her executors, administrators, or assigns; all and every which said accruing or surviving parts or shares, or part or share, shall be assignable and transferrable, and assigned and transferred to them, him, or her respectively, at the same ages, days, and times, or age, day, or time, as their respective original parts or shares of or in the same premises, are hereinbefore directed to be assigned and transferred. PROVIDED ALWAYS, AND UPON THIS FURTHER TRUST, that in case any or either of the children of the said intended marriage (there being more than one) shall live to attain the age of twenty-one years, being a son or sons, or being a daughter or daughters, shall marry before that age, and shall depart this life leaving lawful issue him, her, or them surviving, who shall be living at the time of the decease of any child or children of the said in-

SETTLE-
MENTS.

MARRIAGE.

Leaseholds.

Issue of children
to have their
parents' share.

SETTLEMENTS.

MARRIAGE.

Leaseholds.

In default of
children to
husband.

tended marriage, such issue shall have and be entitled to the same part and share, or parts and shares of or in the accruing or surviving parts or shares, or presumptive parts or shares under the proviso lastly hereinbefore contained, as his, her, or their parent or respective parents would have had, if then living. AND in case there shall be no child of the said intended marriage, or no child who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age, or be married, then subject to such direction or appointment (if any) as aforesaid, UPON TRUST (1) that they the said (*trustees*)

Trust for wife's
appointment.

(1) If the estate be the wife's, and it be intended that on failure of issue it should be subject to her appointment (which will be good, notwithstanding coverture; see *Bayley v. Warburton*, 2 Com. 494. *Burnett v. Mann*, 1 Ves. 157. *Bramhall v. Hall*, Amb. 467. *Rippon v. Dawding*, *ib.* 565), say,

"UPON TRUST that they the said (*trustees*) and the survivor of them, and the executors and administrators of such survivor, and their or his assigns, do and shall after the decease of the said (*intended husband*), without or in failure of such issue as aforesaid, assign and transfer the said messuages, or tenements and premises, pieces or parcels of ground and premises, and all arrears and accumulations, if any, of the rents, issues, and profits of the same premises, unto such person or persons, and for such term or number of years, not exceeding the then residue of the said term of years, and in such parts, shares, and proportions, and in such manner and form, and for such ends, intents, and purposes as the said (*intended wife*) at any time or times, and either before or after the failure of such issue, and as well

and the survivor of them, and the executors and administrators of such survivor, and their or his

SETTLEMENTS.

MARRIAGE.

Leaseholds.

when covert as sole, and notwithstanding her coverture by her said intended or by any future husband, by any deed or instrument in writing to be by her sealed and delivered in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any writing in the nature of or purporting to be her last will and testament, or any codicil or codicils thereto, to be severally signed and published by her in the presence of and attested by three or more credible witnesses, shall direct or appoint the same, or any part thereof; and in default of any such direction or appointment, and in the meantime and until such direction or appointment shall be made or take effect, and from time to time subject to any such direction or appointment as shall have been made as aforesaid, UPON TRUST that they the said (*trustees*) and the survivor of them, and the executors and administrators of such survivor, and their or his assigns, do and shall assign and make over the said messuages, or tenements and premises, with the appurtenances, for all the residue of the said term therein, and also pay the accumulation, if any, of the rents and profits thereof, unto the said (*intended wife*) her executors, administrators, and assigns, for her and their own sole and proper use and benefit." (1).

(1) Under a limitation in a marriage settlement of the wife's personal property in default of her appointment to her next of kin or personal representatives, does not give the benefit of it to her husband taking a prior partial interest in the property; *Bailey v. Wright*, 18 Ves. 49; *Swanst.* 39, S. C.; and see 15 Ves. 536. Wife's property.

A limitation of chattel or personal property after an indefinite failure of issue is void as too remote, *sed secus*, if confined to the death of the party, and to which construction the court leans whenever it can; *Kirkpatrick v. Kirkpatrick*, 13 Ves. 484. Remote limitation.

SETTLE-
MENTS.

MARRIAGE.

Leaseholds.

Advanced
shares to be
brought into
hotchpot.

Powers of main-
tenance and
education.

assigns, do and shall, from and immediately after the decease of the said (*intended wife*), assign and assure the said messuages, or tenements and premises, with their appurtenances, unto the said (*intended husband*) his executors, administrators, and assigns, for all the residue and remainder of the said term which shall be then to come therein, for his and their own sole and proper use and benefit. PROVIDED ALWAYS, and it is hereby declared and agreed, that no child or children or other issue of the said intended marriage, taking any part of the said messuages, or tenements and premises, under any such direction or appointment as aforesaid, shall as against his, her, or their brother or sister, or brothers or sisters, be entitled to any further part or share of the same messuages, or tenements and premises, without bringing the appointed part or share into hotchpot, and accounting for the same, by way of abatement from his, her, or their distributive share under the trusts hereinbefore expressed of or concerning the said premises. AND it is hereby also provided, declared, and agreed by and between the said parties hereto, that it shall be lawful for the said (*trustees*) and the survivor of them, and the executors and administrators of such survivor, and their or his assigns, after the decease of the survivor of them the said (*intended husband*) and (*intended wife*), to apply all or any part of the said rents, issues, and profits which shall be the share, or supposed or presumptive share of each and every the children or other issue of the said in-

tended marriage, who for the time being shall be entitled to any benefit or share of the same rents, issues, and profits, in or towards the maintenance and education of the same child or issue respectively; and also that it shall be lawful for the said (*trustees*) and the survivor of them, his executors and administrators, after the decease of the survivor of them the said (*intended husband*) and (*intended wife*), of his and their own authority, and at his or their own discretion, but in the lifetime of the said (*intended husband*) and (*intended wife*) or of the survivor of them, with his, her, or their consent in writing, under his, her, or their hand or respective hands, to raise (1) by sale, mortgage, or otherwise, and advance to or for the son or sons or other male issue of the said intended marriage, any part not exceeding one half of the value of the supposed or expectant share or portion of each of the same sons and male issue respectively, of and in the said messuages, or tenements and premises, in part of the share or portion, or the supposed or presumptive share or portion of the same son or male issue respectively, for his or their advancement in the world, or otherwise for his or their benefit or advantage (2). PROVIDED ALWAYS,

SETTLEMENTS.

MARRIAGE.

Leaseholds.

And advancement.

Power of leasing.

(1) It is essential that trustees should have power of applying a part of the children's portions for their advancement in life, as it is a general rule that a trustee cannot, of his own authority, break in upon the principal of the infant's fortune, *Walker v. Wetherell*, 6 Ves. jun. 473.

Power of advancement necessary.

(2) There may here be inserted a power for the trustees to lend the husband a part of the trust-money upon his executing

Power to lend husband a part of the trust-monies.

SETTLEMENTS.

MARRIAGE.

Leaseholds.

and it is hereby further declared and agreed by and between the said parties to these presents,

a bond for the repayment of it; the form of such a power may be as follows :

“ PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties hereto, that it shall and may be lawful for the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their or his assigns, and for all and every other the trustees or trustee for the time being under or by virtue of these presents, at any time or times after the solemnization of the said intended marriage, at the request of the said (*intended husband*), signified in writing under his hand, to lend or advance unto him the said (*intended husband*) out of and from the said trust-moneys, funds, securities, and settled premises, any sum or sums of money, (not exceeding the sum of £ sterling, in the whole) at interest after the rate of £5 per cent. per annum, payable half yearly, upon any real or personal security of him the said (*intended husband*), or upon his executing a bond or obligation in writing, in the usual or other proper form of obligations of a like nature (1), or other security to be approved of by the said trustees or trustee for the re-payment of the same, within a time therein to be limited at the discretion of such trustees and trustee, with liberty and full power nevertheless for them or him to forbear payment thereof for any longer or more distant period as they or he shall see occasion or think fit. AND for the purpose of raising and paying the sum or sums so to be by them or him lent, or any part thereof, it is hereby declared

Power to lend on bond.

(1) A power to lend trust-money on real or personal security does not authorise the trustees to lend it to a trader on his bond; where, therefore, this is intended it must be expressly mentioned; see *Lanston v. Oliphant*, Coop. 33; and see *Bateman v. Davis*, 3 Madd. 98.

that it shall be lawful for the said (*intended husband*) during his life, and to and for the said (*intended wife*) after his decease, during her life, and after the decease of both of them the said (*intended husband*) and (*intended wife*) to and for the said (*trustees*) and the survivor of them, and the executors and administrators of such survivor, and their or his assigns, during the minority of any child or children of the said intended marriage, [and they and each of them are hereby authorised, empowered, and directed,] by indenture or indentures in writing under his, her, or their hand or respective hands, or the hand or hands of any attorney or attornies by him or them lawfully authorised in that behalf, to be by him, her, or them respectively sealed and delivered in the presence of and attested by two or more credible witnesses, to demise or lease all and every or any of the messuages, or tenements and premises hereby assigned, or any part thereof, to any person or per-

SETTLE-
MENTS.

MARRIAGE.

Leaseholds.

and agreed that it shall be lawful for them the said trustees or trustee from time to time, as often as there shall be occasion to sell out or otherwise dispose of any part of the said trust-premises, which shall consist of money or be out upon security, and to demise by way of mortgage, any part of the same premises which shall consist of lands or houses, for such term of years and in such manner as shall be deemed most adviseable; and that the receipt of the said trustees, or of such of them as shall be the only acting trustees or trustee for the time being, shall be at all times a good and effectual discharge to every or any person or persons by whom any such money shall be lent or paid."

SETTLE-
MENTS.

MARRIAGE.

Leaseholds.

Power of sale.

sons for any term or number of years, not exceeding years (1) from the making thereof, so that the lease or leases which shall be so granted, be made to take effect in possession, or within three calendar months from the date thereof, and not in reversion by way of future interest, other than as last mentioned, and so that in all and every the said leases there be reserved and made payable half yearly, or oftener, during the continuance of the said term thereby to be granted, the best and most approved yearly rent or rents to be incident to the immediate reversion of the said premises expectant on the determination of the term so to be granted, which can be had or reasonably obtained for the same, without taking any sum or sums of money, or other thing by way of fine, premium, or foregift for granting the same, and so that the lessees in the said leases named, enter into all proper and usual covenants to repair and leave in repair the messuages, erections, and buildings so to be demised, and all other covenants, stipulations, and agreements which are usual or proper in leases of a like nature, and so that in every of the said leases there be contained conditions of re-entry for non-payment of rent, and for non-performance of the covenants and agreements therein reserved and contained. PROVIDED ALWAYS, and it is hereby also declared and

(1) The number of years which shall be then to come of the term to be assigned.

SETTLE-
MENTS.

MARRIAGE.

*Leaseholds.*Free from in-
cumbrances.

faults, means, procurements, consent, or privity. AND that free and clear, and clearly and absolutely acquitted, exonerated, and discharged, or otherwise by and at the expense of the said (*intended husband*) his executors or administrators, well and effectually protected, defended, kept harmless, and indemnified from and against all and all manner of former and other assignments, [gifts, grants, bargains and sales, mortgages, surrenders, assurances, rents, taxes, arrears of rent and taxes, statutes, judgments, recognizances, extents, executions, forfeiture, re-entry, and cause and causes of forfeiture or re-entry] estates, rights, titles, trusts, interests, charges, and incumbrances whatsoever, which at any time heretofore have been, or which at any time hereafter, shall or may be made, committed, created, or knowingly occasioned or suffered by the said (*intended husband*) his executors or administrators, or any person or persons now or hereafter lawfully, or equitably and rightfully claiming or possessing any estate, right, title, or interest, by, from, under, or in trust for him, them, or any or either of them, save and except the rent or rents in and by the hereinbefore in part recited indenture of lease reserved or made payable, and the covenants and agreements therein contained, on the part of the tenant, lessee, or assignee of the said premises, to be performed or observed, and save also and except such underleases, leases, or agreements for underleases, as have been produced unto the said (*trustees*) their counsel or solicitor, at or before the sealing

and delivery hereof. AND the said (*intended husband*) doth hereby for himself, his heirs, executors, and administrators, further covenant, promise, and agree to and with the said (*trustees*) their executors and administrators, in the manner following, (that is to say) that he the said (*intended husband*) shall and will from time to time, and at all times during such period of the said term of

SETTLEMENTS.

MARRIAGE.

Leaseholds.

Covenant by husband to pay the rent reserved by the original lease.

years as he shall happen to live, pay or cause to be paid, all and every the rents reserved or made payable in or by the said in part recited indenture of lease, or by any future lease to be obtained of the said premises, and also all taxes and other outgoings, from time to time due and payable for or in respect of the same premises, as and when the same respectively shall become due and payable, and also well and truly observe and perform, or cause to be observed and performed, the several covenants and agreements in the said indenture of lease contained, which on the tenant or lessee's part, is or are thereby required to be performed (1), and well and effectually save harm-

(1) If the premises be holden on lease determinable on lives, add,

Years determinable on lives.

“ And also shall and will from time to time during his life, when and as often as any or either of the persons for whose life or lives the said premises are holden, shall happen to depart this life, use his best endeavour to procure a new lease of the same premises, to be made and executed to the said (*trustees*) or the survivor of them, or their or his assigns, for and during a further term of years deter-

SETTLEMENTS.

MARRIAGE.

Leaseholds.

And keep premises insured.

And for further assurance.

less and keep indemnified them the said (*trustees*) their executors, administrators, or assigns, of and from the same. AND further, that he the said (*intended husband*) his executors or administrators, shall and will, &c. (*covenant to insure, &c.*) (1). AND moreover, that he the said (*intended husband*) his executors and administrators, and all and every person and persons whomsoever, now or hereafter lawfully claiming or possessing any legal or equitable estate, right, title, or interest, in, to, out of, upon, or respecting the said (2) messuages or tenements, pieces or parcels of ground, and other the premises hereinbefore

minable on the life or lives of some other fit person or persons, and such of the lives in the then subsisting lease named, as shall be then in being, and the life of the longest liver of them, at or under the same or like rents, covenants, and agreements as in and by the present or the then subsisting lease are reserved and contained, and so from time to time as often as any of the lives in the present or any such new or future lease shall happen to die, and shall and will when any such new lease as aforesaid shall be made and executed, pay or cause to be paid the fine for making and granting such new lease of the same leasehold premises, and other the fees, costs, and charges incident thereto."

Brevity.

(1) See *ante*, p. 421, rider (F); but if a covenant to insure is in the original lease, it may be omitted here, as being comprised in the preceding covenant by the husband to perform the covenants contained in such lease.

Moiety, &c.

(2) If the assignment be of a moiety or other portion only of the premises, say,

"The said undivided moiety or half part, of and in the said messuages or tenements," &c.

assigned, or mentioned or intended so to be, (other than persons claiming and entitled under or by virtue of any such underleases, or agreements for underleases as aforesaid, so far as concerns their respective estates and interests under or by virtue of the same) shall and will, from time to time, and at all times hereafter, before the expiration of the said term of years (1), upon every reasonable request of the said trustees or trustee for the time being, at the proper costs and expense of the said (*intended husband*) his executors or administrators, make, do, execute, and perfect, or cause to be made, done, executed, and perfected, all and every such further and other lawful and reasonable acts, deeds, conveyances, and assurances in the law whatsoever, for the further, better, more perfectly, and absolutely or satisfactorily assigning, confirming, and assuring all and singular the same (2) messuages, or tenements and premises, with their respective appurtenances, unto the said (*trustees*) their executors, administrators, and assigns, for all the residue and remainder which shall be then to come and unexpired of the said term, as they the said (*trustees*) or the survivor of

SETTLE-
MENTS.

MARRIAGE.

Leaseholds.

(1) If the lease be for years determinable upon lives, add, Years deter-
“ If they the said (*nominees*) or either of them shall so minable on
long live.” lives.

(2) If the assignment be of a moiety or other portion only of Moiety, &c.
the premises, say,

“ The said undivided moiety or half part (*as the case may
be*) of and in the said messuages or tenements,” &c.

**SETTLE-
MENTS.****MARRIAGE.*****Lensholds.***

them, or the executors or administrators of such survivor, or their or his assigns, or his or their counsel in the law, being of the degree of a barrister, shall advise and require, [so that such further assurances, or any of them, do not contain nor imply any further or more general covenants on the part of the person or persons who shall be required to make or execute the same, than for or against the acts, deeds, omissions, or defaults of him, her, or them, and of his, her, or their lessors, or assignors, or executors and administrators, and so that he, she, or they, be not obliged to go from his, her, or their then place or respective places of abode for that purpose, without a reasonable and sufficient sum being previously paid and tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expenses,] which said acts, deeds, and assurances, shall, unless otherwise declared or expressed, be and enure in corroboration of these presents, and of the estate and interest hereby assigned, or otherwise assured, or mentioned or intended so to be as aforesaid (1). Pro-

Power of appointing new trustees.

(1) If it be agreed, that instead of the rents of the settled estates, the wife shall be paid a sum of money equivalent to her fortune, if she survive her husband, say,

Covenant to pay wife a sum of money, if she survive husband.

“AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and for making a further provision for the said (*intended wife*), in case the said intended marriage shall take effect, HE the said (*intended husband*) for himself, his heirs, executors, and administra-

VIDED ALWAYS, and it is hereby further declared and agreed by and between the said parties hereto,

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tors, doth hereby covenant, promise, and agree, to and with the said (*trustees*) their executors, administrators, and assigns, that in case the said (*intended wife*) shall survive him the said (*intended husband*), the heirs, executors, or administrators of him the said (*intended husband*) shall and will, within six calendar months next after his decease, well and truly pay unto the said (*intended wife*) her executors, administrators, or assigns, the sum of £ , for her and their own sole and proper use and benefit."

If she is to receive an annuity for life on her surviving her husband, instead of the rents of the settled estates, say,

To pay wife an annuity on her surviving her husband.

"SHALL and will well and truly pay, or cause to be paid unto the said (*intended wife*) or her assigns, yearly and every year during the term of her natural life, one annuity or clear yearly sum of £ , free and clear of and without any deduction, defalcation, or abatement, for or in respect of any taxes, charges, assessments, or other impositions of any other kind or nature whatsoever, the same annuity to be payable and paid by four equal quarterly payments, on the day of , the day of , the day of , and the day of , in each and every year, the first payment thereof to begin and be made on such of the said days of payment as shall happen next after the decease of the said (*intended husband*), together with a proportional part of the said annuity or yearly sum of £ , for the time which may happen to elapse between the quarterly day of payment next preceding the decease of the said (*intended wife*), and the day or time of such her decease. AND that he the said (*intended husband*) shall and will, by his last will and testament in writing or otherwise, well and sufficiently secure the due payment of the said sum of £ , [or the said annuity or yearly sum of £ ,] unto the said (*intended wife*) her executors, administrators, and assigns respectively, at the times and in

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that in, &c. (*add power of appointing new trustees, and usual clauses for their indemnity, &c.* (1). IN WITNESS, &c.

the manner hereinbefore mentioned, and for that purpose shall make the same a lien or charge upon the whole, or a sufficient part of the real and personal estates of him the said (*intended husband*), with proper and effectual powers and remedies for recovering the same."

Covenant by the lady's father to take husband into partnership.

If the father of the intended wife be in trade, and he have agreed to take the husband into copartnership, add,

"AND the said (*wife's father*) in consideration of the said intended marriage, and of the affection he bears to his said daughter, doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said (*intended husband*) his executors, administrators, and assigns, that in case the said intended marriage shall take effect, he the said (*wife's father*) shall and will, on or before the day of next ensuing the date of these presents, admit and take the said (*intended husband*) as copartner in trade with him the said (*wife's father*) in his business or profession of , for the term of years thence next following; and allow and make over to the said (*intended husband*) one moiety or half part of and in the same profession or business accordingly, and the proceeds and gains thereof, under and subject to such terms, conditions, and stipulations, as are usual between copartners in the like profession or business; and in case of difference between them the said (*wife's father*) and (*intended husband*), then upon and subject to such terms, conditions, and stipulations as shall be agreed upon by three arbitrators to be made by them respectively in the usual course of reference to arbitration."

(1) See *ante*, p. 389, for full, and p. 481 for concise forms.

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(A) If the wife's future property is to be settled, add, (*ante*, p. 567),

“AND THIS INDENTURE FURTHER WITNESSETH, and it is hereby further declared and agreed by and between all the said parties to these presents, as far as they are respectively interested, and particularly the said (*intended husband*) for himself, his heirs, executors, and administrators, doth hereby covenant, agree, and declare, to and with the said (*trustees*) their executors, administrators, and assigns, in the manner following, (that is to say) that all and singular the lands, tenements, hereditaments, and real estates, and also all and every sum and sums of money, legacies, goods, and chattels, and personal estate of every nature and kind soever, which shall at any time or times during the said intended marriage, descend, devolve, or come to the said (*intended wife*), or to the said (*intended husband*) in her right, under or by the last will and testament of her father or mother, or any codicil or codicils thereto, or by reason of the decease of her father or mother intestate, shall from time to time be by him the said (*intended husband*), either alone or together with the said (*intended wife*), as the case may require, be conveyed, assigned, transferred, paid, and made over unto and to the use of the said (*trustees*) or other the trustees or trustee under these presents, their and his heirs, executors, or administrators, according to the nature or quality of the said property respectively, upon trust that they the same trustees or trustee respectively, and the heirs, executors, or administrators of the survivor of them, and their or his assigns, do and shall convey, assign, transfer, pay, and make over the same respectively to such person or persons, for such estate or estates, upon such trusts, and to and for such ends, intents, and purposes, and with, under, and subject to such powers, provisos, limitations, declarations, and agreements, and charged and chargeable with the payment of such annual or other sum or sums, and in such manner and form as she the said (*intended wife*), notwithstanding her cover-

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ture, and whether covert or sole, by any deed or deeds, writing or writings, with or without power of revocation, to be by her sealed and delivered in the presence of, and attested by two or more credible witnesses, or by her last will and testament in writing, or any codicil or codicils thereto, or any writing purporting to be her last will and testament, or codicil or codicils thereto to be by her signed and published in the presence of three or more credible witnesses, shall direct or appoint; and in default of and in the meantime, and until such direction or appointment shall be made or take effect, and in case any such shall be made, then subject thereto, and when and as the estates and interests thereby directed or appointed, shall respectively end and determine, and as to such part or parts thereof whereof no such direction or appointment shall be made, upon trust that they the said trustees and trustee, the heirs, executors, or administrators of the survivor of them, and their and his assigns, shall stand and be seised, possessed of, and interested in the said lands, tenements, hereditaments, and real estate, and also the said sum and sums of money, legacies, goods and chattels, and personal estate, or so much of the same hereditaments and property respectively as shall not have been so directed, limited, or appointed by her the said (*intended wife*) as aforesaid, in trust for the sole use and benefit of her the said (*intended wife*) her heirs, executors, administrators, and assigns, according to the nature and quality of the same hereditaments and property respectively, and upon, to, or for no other trust, intent, or purpose whatsoever. AND it is hereby declared and agreed, that in the meantime, and until such direction, limitation, or appointment as is hereinbefore mentioned shall be made and take effect, the said trustees or trustee aforesaid shall receive and take all and singular the rents, issues, and profits, and interest, dividends, and proceeds thereof, and pay the same into the proper hands of her the said (*intended wife*) for her own sole and separate use and benefit, or into the hands of such person or persons as she shall by any writing signed by her, from time to time (notwithstanding her present or any future coverture) direct or appoint; and

the same and every part thereof shall at all times be independent of him the said (*intended husband*), who shall not nor will intermeddle therewith, or with any part thereof, nor shall the same be subject or liable to his control, debts, or engagements, but the receipt and receipts of her the said (*intended wife*) or of such person or persons as she shall from time to time appoint to receive the same, or any part thereof, shall at all times and from time to time, notwithstanding her coverture, be a good and sufficient discharge for so much of the said rents, issues, and profits, interest, dividends, and proceeds, as shall therein or thereby be expressed or acknowledged to be received."

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Funds, &c.

No. VI.

*Marriage Settlement of a present Interest in
Money in the Funds, and other Personalities.**Variations where it is a reversionary Interest.**Where part of the Property to be settled is Money due
upon mortgage, or other outstanding Property of a
personal nature (1).**Where the Wife's Portion or a part of it is secured to
be paid at a future time, &c. &c. (2).*

Parties.

THIS INDENTURE of three parts, made the
day of [* in the year of the reign,
&c. and] in the year of our Lord . BETWEEN

Personal prop-
erty subject to
a settlement.

(1) Personal estate is so fluctuating in its nature, that it is impossible to make every specific article the subject of settlement; *Randall v. Willis*, 5 Ves. jun. 274; but where it is of such a kind as to be capable of a definitive description, and has become a vested interest in the party, it may be made the subject of a family arrangement equally with property of a more permanent nature; and see *ante*, p. 538, n. (†).

Notes and
variations.

(2) For notes and variations to those parts of the above precedent to which none are added, see those subjoined to No. II. *ante*, p. 281, *et seq.* the variations *ante*, p. 489, *et seq.* and 525, *et seq.*

Brevity.

* If brevity be particularly desired, those parts of the precedent within brackets may be omitted.

the (*intended husband*) of, &c. of the first
part, the (*intended wife*) of, &c. of the second
part, and the (*trustees*) (1) of, &c. trustees named
and appointed for the purposes hereinafter men-
tioned, of the third part. WHEREAS a marriage
hath been agreed upon and is intended to be
shortly had and solemnised between the said (*in-
tended husband*) and (*intended wife*). AND WHERE-
AS (2) the said *intended husband* or *wife*) as the

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(1) In a settlement of stock or other property of a personal
kind, it will be proper that there should be at least *three* trus-
tees, as otherwise it will, by the death of either of the trustees,
be at the sole disposal of one only, and upon his decease, in-
testate, before the appointment of others, would vest in his ad-
ministrator, who might be a person improper or incompetent to
perform the trusts.

Number of
trustees.

(2) If the property intended to be settled consist of a re-
versionary interest in bank annuities, recite here the deed or will
under which the party claims.

Reversionary
interest.

If the fortune of the wife be not paid at the execution of the
settlement, but be secured by the bond of her father, recite such
bond as follows :

Wife's portion
secured by
bond.

“ AND WHEREAS by a bond or obligation in writing un-
der the hand and seal of the said (*lady's father*), bearing
even date with these presents, the said (*lady's father*) hath
become bounden unto the said (*trustees*) in the penal sum
of £ , with a condition for making void the same on
payment by the said (*lady's father*) unto the said (*trustees*)
their executors, administrators, and assigns, in case the said
intended marriage shall take effect, of the sum of £ , of
lawful money of the United Kingdom of Great Britain and
Ireland, of English value and currency, on the day of ,
which will be in the year , with interest for the same
after the rate of £5 per cent. per annum in the meantime,

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case may be, is entitled to the sum of £ ,
three per cent. consolidated bank annuities, which

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in case he shall so long live; but in case he the said (*lady's father*) shall depart this life before the said day of , then upon payment by the heirs, executors, or administrators of him the said (*lady's father*) of the said principal sum of £ , within twelve calendar months next after his decease, together with interest after the rate aforesaid until payment thereof."

Money due
upon mortgage.

If part of the property to be settled consist of money due upon mortgage, the assignment of the mortgage should be by separate deed, that when the money is paid the deed may be delivered up, and see *ante*, pp. 526. 539; but if it be intended to be assigned by the settlement, recite here the mortgage, as,

Recital of
mortgage.

"AND WHEREAS by indenture of demise by way of mortgage, bearing date the day of , which was in the year , and made or expressed to be made between (*the mortgagor*) of the one part, and the said (*intended husband*) of the other part, certain messuages, lands, and hereditaments of him the said (*mortgagor*) therein particularly described, and mentioned to be situated at , in the county of , were demised unto the said (*intended husband*) his executors, administrators, and assigns, for the term of 500 years for securing the payment of the sum of £ , with interest after the rate of £5 per cent. per annum, at a place and time therein mentioned. AND WHEREAS the said sum of £ was not paid at the time by the said indenture appointed for payment thereof, and the same still remains due to the said (*intended husband*) upon the said security, together with the sum of £ for arrears of interest. AND WHEREAS upon the treaty for the said intended marriage, it was agreed that the said sum of £ should be assigned to the said (*trustees*) upon the trusts, and to and for the ends, intents, and purposes hereinafter expressed. Now THIS INDENTURE WITNESSETH, that

WITNESS.
Intended husband assigns.

it has been agreed should be vested in the said (*trustees*) upon the trusts, and for the ends and

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Funds, &c.

in pursuance and performance of the said agreement, and in consideration of the said intended marriage, [and also for and in consideration of the sum of 10s. of lawful current money of England, to the said (*intended husband*) in hand well and truly paid by the said (*trustees*), at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged] H_E the said (*intended husband*) HATH granted, bargained, sold, assigned, transferred, and set over, and by these presents DOTH grant, bargain, sell, assign, transfer, and set over unto the said (*trustees*) their executors, administrators, and assigns, ALL that the messuage, &c. (*as in the mortgage deed*) and all the estate, &c. and the said indenture, &c. (see *ante*, Vol. III. p. 512, *et seq.*) AND also all that the said principal sum of £ , so due and owing upon the hereinbefore in part recited mortgage, and all interest and arrears of interest due and to grow due for or in respect of the same, and also the hereinbefore in part recited indenture of mortgage, and also all other deeds, instruments, and writings given for securing the payment of the said sum of £ and interest, and all benefit and advantage whatsoever to arise or to be had, received, or taken by or from the same respectively; and all the estate, right, title, interest, use, trust, property, benefit, claim, and demand whatsoever, both at law and in equity of him the said (*intended husband*) in, to, or out of the said principal sum and interest, and the lands and hereditaments so demised to the said (*intended husband*) for securing the payment thereof as aforesaid. TO HAVE AND TO HOLD the said messuages, &c. for the residue of the said term, &c. *as supra*, (subject to the proviso for redemption in said indenture contained), AND TO HAVE, HOLD, receive, take, and enjoy the said principal and interest, monies, securities, and all and singular other the premises hereby assigned, or mentioned, or intended so to be, with their and every of their appurtenances, unto the said (*trustees*) their

The sum due
upon mortgage.

To hold to trustees, upon the trusts after declared.

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MARRIAGE.

Money in the Funds, &c.

Power of attorney to receive the sum due upon mortgage.

purposes hereinafter expressed. AND WHEREAS in pursuance of the said agreement, the same hath

executors, administrators, and assigns, but nevertheless UPON THE TRUSTS, and to and for the several ends, intents, and purposes hereinafter declared or expressed concerning the same. AND for the better and more effectually enabling the said (*trustees*) their executors, administrators, and assigns, to recover and receive the said principal sum of £ , together with all interest, and arrears of interest now or hereafter to become due thereon, HE the said (*intended husband*) HATH made, ordained, constituted, and appointed, and by these presents DOth make, ordain, constitute, and appoint the said (*trustees*) their executors, administrators, and assigns, to be the true and lawful attorneys irrevocable of him the said (*intended husband*) for him and in his name, but for the trusts and purposes aforesaid, to ask, demand, sue for, recover, and receive, by all lawful and equitable ways and means whatsoever, of and from the said (*mortgagor*), and all and every other person or persons to whom it doth or shall or may belong to pay the same, all and every the said principal sum of £ , so due and owing upon the said in part recited securities as aforesaid, and all interest, and arrears of interest; now or hereafter due, or to grow due for the same; and upon payment of the same, or any part thereof, to give, sign, and execute good and sufficient receipts, acquittances, and discharges for the same; and in case of non-payment thereof, or of any part thereof, to commence and prosecute any suit or action, or suits or actions, in any court of law or equity, or any other legal means or remedies for obtaining payment thereof, or for foreclosing the equity of redemption of the said (*mortgagor*) his executors or administrators, in the premises so demised as aforesaid, or obtain possession of the same, or the rents, issues, and profits thereof, with full power and authority to substitute or appoint, under or in the room or stead of them.

accordingly been this day transferred into the joint names of them the said (*trustees*) in the books of the Governor and Company of the Bank of England kept for that purpose (1). Now THIS

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or him the said attorney or attornies, any other person or persons from time to time, for all or any of the purposes aforesaid, at their or his free will and pleasure, and otherwise act, in all and singular or any of the premises, in all things as they shall be advised or think fit, he the said (*intended husband*) hereby allowing, ratifying, and confirming, and promising, and agreeing from time to time, and at all times to allow, ratify, and confirm all and whatsoever his said attornies or attorney shall lawfully do, or cause and procure to be done in or about the premises, under or by virtue of these presents." (*Add covenant by assignor that he has not incumbered, see ante, p. 377*).

Witness, that the trustees shall be possessed of the bank annuities.

If the mortgage be in fee, there may be added,

" PROVIDED ALWAYS nevertheless, and it is hereby declared and agreed by and between the parties to these presents, that if default shall be made in payment of the said principal sum of £ and interest, within the time allowed by the rules of equity for payment thereof, and the equity or right of redemption of him the said (*mortgagor*) and his heirs, of or in the hereditaments whereupon the same is so secured as aforesaid, shall be barred or foreclosed, then and in such case the said hereditaments, and every of them, shall be taken and considered, and the same are hereby declared to be real estate, and shall go and belong to him the said (*intended husband*) and his heirs, as or for an estate of inheritance, subject nevertheless to the payment of the said principal sum of £ , and the interest thereof, after the rate aforesaid, in like manner as the same is or are now subject thereto."

Mortgaged premises to be deemed real estate.

(1) As the court will not decree a specific performance of an agreement for the transfer of stock, by reason of damages at law being an adequate redress in case of breach; *Ward v. D.*

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Assignment of reversionary interest.

INDENTURE WITNESSETH (1), that in consideration of the said intended marriage, it is hereby de-

Buck. 3 Brow. P. C. 581; Newbrown v. Thornton, 10 Ves. 159; and see *ante*, p. 540; it should be transferred before the marriage.

(1) If the settlement be of a reversionary interest, such interest must be assigned to the trustees, in which case say,

“NOW THIS INDENTURE WITNESSETH, that in pursuance and execution of the said agreement, and in consideration of the said intended marriage, and also for and in consideration of the sum of 10s. of lawful money of England, to the said (*intended husband*) well and truly paid by the said (*trustees*), at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, He the said (*intended husband*) HATH granted, bargained, sold, assigned, transferred, and set over, and by these presents DOTH grant, bargain, sell, assign, transfer, and set over unto the said (*trustees*) their executors, administrators, and assigns, ALL that the said sum of £ three per cent. consolidated bank annuities, to which the said (*intended husband*) his executors or administrators, shall or may become, or if these presents had not been made, would or might have become entitled to, or interested in upon the decease of the said , or otherwise howsoever; and all and every the funds and securities, or fund and security upon which the same or any part thereof, now is or hereafter shall or may be placed out or invested; and all and all manner of dividends, interest, annual proceeds, and other produce of the same; and all the estate, right, title, contingent, reversionary and other interest, possibility, benefit, property, legal and equitable claim and demand whatsoever, of him the said (*intended husband*) of, in, and to the said £ , and the funds and securities upon which the same, or any part thereof, shall or may at any time hereafter be placed out or invested. To HAVE, HOLD, receive, take, and enjoy the said annuities, funds, and securities, and other the premises hereinbefore assigned, or mentioned, or in-

clared and agreed by and between all the said parties hereto, as far as they are respectively interested, and the true intent and meaning of them and of these presents, is, that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their and his assigns, shall stand possessed of and interested in the same sum of £ , three per cent. consolidated bank annuities, upon the trusts, and

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tended so to be, and every part thereof, unto and by them the said (*trustees*) their executors, administrators, and assigns, immediately from and after, and expectant upon the decease or other sooner determination of the estate for life of the said therein, and in the meantime subject thereto, UPON THE TRUSTS, and to and for the several ends, intents, and purposes hereinafter declared or expressed concerning the same." (*Here add a power of attorney authorizing the trustees to receive, &c. as ante, pp. 513. 584.*)

If the property to be settled consist of a legacy, or the like, Legacy. say,

"ALL that legacy or sum of £ , so bequeathed to the said (*intended wife*) by the hereinbefore in part recited will of the said (*testator*) deceased, together with all interest now due, or hereafter to become due, for or in respect of the same, and all the estate, right, title, interest, property, benefit, advantage, claim, and demand whatsoever, both at law or in equity of her the said (*intended wife*) of, in, to, or out of the same, and every part thereof, by virtue of the said recited will, or otherwise howsoever."

If the assignment be of residuary property, say,

Residuary property.

"ALL that the said residue of the estate and effects of the said (*testator*) deceased, from and after payment and satisfaction of all debts, legacies, and other payments therein particularly mentioned, and all other the goods, chattels,

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In trust for husband until marriage.

for the ends, intents, and purposes following, (that is to say) IN TRUST for the said (*intended husband*) until the said intended marriage shall take effect; and from and immediately after the solemnization thereof (1), then UPON TRUST that they the said

monies, stocks, funds, securities for money, and personal estate to which the said (*intended wife*) is or may be entitled under or by virtue of the said in part recited will, and all the estate," &c. And see *ante*, p. 512.

Money due on bond, &c.

If the property be money due on a bond or other security, say,

"All that bond or obligation in writing under the hand and seal, [*or* all that promissory note under the hand] of the said , bearing date, &c. and the said sum of £ so due thereon as aforesaid, and all interest now and from time to time hereafter to accrue due thereon, and all benefit and advantage of the said security, and all the estate," &c. *as above*.

Wife's portion secured by bond.

(1) If part of the lady's portion be secured by the bond of her father, say,

"AND from and immediately after the solemnization of the said intended marriage, shall stand and be possessed of the said sum of £ so secured by the hereinbefore in part recited bond of the said (*lady's father*) as aforesaid, UPON TRUST that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their and his assigns, do and shall, with the consent of the said (*intended husband*) and (*intended wife*) or of the survivor of them, during his or her lifetime, and after the decease of the survivor of them, then of the sole and proper authority of the said trustees or trustee, lay out and invest the same, when and as the same shall from time to time be gotten in and received, in the purchase of three per cent. consolidated bank annuities, or

(*trustees*) and the survivors and survivor of them; and the executors and administrators of the survivor, and their and his assigns, do and shall pay, apply, and dispose of the interest, dividends, and annual proceeds of the said sum of £ three per cent. consolidated bank annuities, when and as the same shall be by them or him received or receivable (1), unto the said (*intended husband*)

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Husband for life.

upon real securities at interest, in their or his names or name; and shall stand and be possessed of and interested in the said stocks, funds, and securities, and also of the sum of £ in the meantime, and until the same shall be so invested, IN TRUST to pay, apply, and dispose of the interest, dividends, and annual proceeds of the same, unto the said (*intended husband*),” &c. as above.

(1) If it be intended that the dividends, &c. should be payable to the wife for life, in the first instance, say, Interest to wife for life.

“ To such person or persons, and for such intents and purposes, during the life of the said (*intended wife*) as she, notwithstanding her coverture, and as if she were sole and unmarried, shall from time to time, after each quarterly payment shall become due, but not sooner or otherwise by anticipation, by any note or writing, or notes or writings, signed with her own hand, direct or appoint (but not by way of anticipation); and in default of and until such direction or appointment, of the said interest, dividends, and annual proceeds, do and shall pay the same, or so much thereof concerning which no such direction or appointment shall be made, into the proper hands of her the said (*intended wife*) for her sole and separate use and benefit, exclusively and independently of the said (*intended husband*) her intended husband, his creditors or assigns, who, it is hereby declared and agreed, shall not receive, apply, or in any manner intermeddle with the same, or any part thereof,

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and his assigns, for and during the term of his natural life (1), or at his or their request, authorise

or have or possess any control or interest in, over, or concerning the same, [but so as that the executors, administrators, or assigns of her the said (*intended wife*) shall not be entitled to any apportionment or proportional part of the current or accruing dividends, interest, or annual proceeds, between the last day for payment thereof and the day of her decease, in case the same shall happen between any of the other days of payment (2);] and to intent aforesaid, it is hereby declared and agreed that the receipts of the said (*intended wife*) or of such person or persons as she shall appoint to receive the said interests, dividends, and annual proceeds, or any part thereof, signed with her hand, after, and not before, the same has become due, shall from time to time, notwithstanding her said intended coverture, be good and effectual releases and discharges to the said (*trustees*) their executors, administrators, and assigns, for so much money as in such receipts respectively shall be expressed and acknowledged to be received; and from and immediately after the decease of the said (*intended wife*), then UPON TRUST," &c. *as above*.

Bankruptcy of husband.

(1) If the intended husband be in trade, or likely to become so, and the property be the wife's, see *ante*, p. 448, n. (1), it may be limited to him until he commit an act of bankruptcy, in which case say,

" UNTO the said (*intended husband*) and his assigns, for and during the term of his natural life, or until he shall commit an act of bankruptcy within the meaning of any

Anticipation.

2) It was once doubted whether a clause restraining a wife from disposing of or receiving by anticipation the provision made her was valid, but it is now settled that it is; see *Jackson v. Hobhouse*, 2 Mer. 483.

and empower him or them to receive and retain the same, to and for his or their own use and benefit; and from and immediately after the decease of him the said (*intended husband*) leaving said (*intended wife*) him surviving, then [UPON TRUST that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their and his assigns, do and shall pay, apply, and dispose of the interest, dividends, and annual proceeds of the said sum of £ three per cent. consolidated bank annuities], unto the said (*intended wife*) and her assigns, for and during the term of her natural life, in case she shall survive the said (*intended husband*) her intended husband, or at her or their request, authorise and empower her or them to receive and retain the same to and for her or their own use and benefit (1); and from

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

Wife for life.

statutes made or to be made in relation to bankrupts, whereon a commission shall issue, and he shall be so found or declared a bankrupt, or until he shall make any composition with his creditors for the payment of his debts, although a commission of bankruptcy shall not issue against him, or until he shall make any assignment of his effects for the benefit of his creditors, which shall first happen; and from and after the decease of the said (*intended husband*) or his committing any act of bankruptcy, whereupon a commission shall issue, and he shall be found or declared a bankrupt, or making any such composition or assignment as aforesaid, Then UPON TRUST for the said (*intended wife*),” &c. *as above*.

(1) If the provision made for the wife be intended to be di-

If wife marry again, her life interest to be diminished.

SETTLEMENTS.

MARRIAGE.

*Money in the
Funds, &c.*

and immediately after the decease of the survivor of them the said (*intended husband*) and (*intended*

minished in favour of the children, in case of her second marriage, the following proviso may be inserted :

“ PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties hereto, that in case the said (*intended wife*) shall happen to survive the said (*intended husband*) her intended husband, and shall intermarry with any other person, and there shall be issue between the said (*intended husband*) and (*intended wife*) his intended wife, living at the time of such her second marriage, it shall be lawful for the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their and his assigns, and he and they is and are hereby directed from and after such second marriage of the said (*intended wife*) to pay unto her the said (*intended wife*) and her assigns, one moiety or half part only of the interest, dividends, and annual proceeds of the said sum of £ three per cent. consolidated bank annuities hereinbefore provided for the said (*intended wife*) for her life as aforesaid, in lieu and stead of the whole of the same dividends, interest, and annual proceeds, and do and shall stand possessed of and interested in the residue and remainder of the same interest, dividends, and proceeds, IN TRUST for the maintenance, education, and benefit of the child or children or other issue of the said (*intended husband*) by her the said (*intended wife*) in such and the same manner, and with such and the same powers and discretion of the said trustees for the time being, in respect of the application and management thereof, as are hereinafter declared of or concerning the interest, dividends, and proceeds of the said sum of £ three per cent. consolidated bank annuities, from and after the decease of the survivor of them the said (*intended husband*) and (*intended wife*). ”

wife) then UPON TRUST that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their and his assigns, shall stand possessed of and interested in the said sum of £ three per cent. consolidated bank annuities, and other the funds and securities thereof for the time being, IN TRUST for all and every the child and children of the said (*intended husband*) by the said (*intended wife*) his intended wife, in the manner following, (that is to say) (1) in case there shall be but one of the said intended marriage, to pay, assign, and transfer the same, (subject and without prejudice to the trusts hereinbefore declared of and concerning the same) IN TRUST for such only child (2), or the issue of such child, and to become vested in him, her, or them, at such age or ages, or time or times, not exceeding the age of twenty-one years, and with such maintenance in the mean time, and under and subject to such conditions,

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

If but one child, to such only child in such manner as husband shall appoint.

(1) If part of the lady's portion be secured by the bond of her father, add,

Wife's portion secured by bond.

“ And also of and in the said sum of £ , or the stocks, funds, and securities so to be purchased therewith, or wherein the same shall be laid out and invested as aforesaid.”

(2) The above limitation to an only child may, if brevity be desired, be omitted, and the limitation inserted above, be made to “ all and every the child or children,” as *ante*, No. IV. p. 516.

Brevity.

SETTLEMENTS.**MARRIAGE.***Money in the Funds, &c.*

In default of such appointment, as wife shall appoint.

restrictions, charges, and limitations over (such limitations over being for the benefit of such child or issue as aforesaid, or some or one of them), as he the said (*intended husband*) (1) at any time, and from time to time during his life, by any deed or deeds, writing or writings, with or without power of revocation, to be by him signed, sealed, and delivered in the presence of and attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to be by him signed and published in the presence of and attested by three or more credible witnesses, shall direct or appoint; and in default of and until such direction or appointment, or in case of any such being made, and the same shall not take effect, or shall not be a disposition or appointment of the whole of the said trust funds and premises, then as to the same, or so much thereof of or concerning which no such disposition or appointment shall be made or take effect, IN TRUST for and to become a vested interest in such only

Joint appointment.

(1) If it be intended that the power of appointment should be exercised by the husband and wife jointly, say,

“As the said (*intended husband*) and (*intended wife*) his intended wife, at any time or times, and from time to time, during their joint lives, in and by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be by them both sealed and delivered in the presence of and attested by two or more credible witnesses, shall direct or appoint; and in default of such direction,” &c. *as above*.

child, or the issue of such child, at such age or ages, or time or times, not exceeding the age of twenty-one years, and with such maintenance in the mean time, and under and subject to such conditions, restrictions, charges, and limitations over (such limitations over being for the benefit of such child or issue, or some or one of them) as she the said (*intended wife*) (1), in case she shall survive the said (*intended husband*) her intended husband, by any deed or deeds, writing or writings, with or without power of revocation, to be by her signed, sealed, and delivered in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any codicil or codicils thereto, or any writing purporting to be or being in the nature of any such will or codicil, to be by her signed and published in the presence of and attested by three or more credible witnesses, shall, whether she be then sole or covert with any future husband (2), direct or appoint; and in default of any such direction or appointment, or in case any such shall

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

(1) If the power of appointment be given to the survivor of the husband and wife, say, Appointment by survivor.

“As the survivor of them the said (*intended husband*) and (*intended wife*) his intended wife, after the decease of the other of them, and as to the said (*intended wife*) whether she be then sole or covert with any future husband, shall by any deed or deeds,” &c. *as above*.

(2) When a power of appointment is given to a woman to be exercised at her own discretion, it should authorise her to do, Appointment by feme covert.

SETTLEMENTS.**MARRIAGE.***Money in the Funds, &c.*

In default of such appointment, to such only child at 21, or marriage.

If two or more children of the marriage, in trust for them as husband shall appoint.

be made, and the same shall not take effect, or shall not be a disposition or appointment of the whole of the said trust funds and premises, then as to the same or so much thereof of or concerning which no such disposition or appointment shall be made or take effect, UPON TRUST for and to become a vested interest in such only child, if a son, at his age of twenty-one years, and if a daughter, at that age or marriage, which shall first happen.

AND in case there shall be two or more children of the said intended marriage, then UPON TRUST for [and to pay, assign, and transfer the said sum of £ three per cent. consolidated bank annuities, (subject as aforesaid) and the stock, funds, and securities for the same, and the dividends and interests thereof, unto, between, and amongst] such two or more children, or the issue of any such children who may happen to die, leaving issue, or to any one or more of such children, or the issue of such children, in exclusion of any other or others of them, at such age or ages, time or times, not exceeding the age of twenty-one years, in such parts, shares, or proportions, (if more than one) and with such maintenance in the mean time, and under and subject to such conditions, restrictions, charges, and limitations over, (such limitations over being for the benefit of some or one of such

so, whether covert or sole; as otherwise, should she afterwards marry, it may be questioned whether the execution of the power would be effective.

children or issue) as he the said (*intended husband*) (1) at any time or times, during his life, by any deed or deeds, writing or writings, with or without power of revocation, to be by him signed, sealed, and delivered in the presence of and attested by two or more credible witnesses, or by his last will and testament in writing, or any codicil or codicils thereto, to be by him signed and published in the presence of and attested by three or more credible witnesses, shall direct or appoint (2); and in default of such last mentioned direction or appointment, or in case of any such being made, and

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

In default of such appointment, as wife shall appoint.

(1) If it be intended that the power of appointment should be exercised by the husband and wife jointly, say,

Joint appointment.

“As they the said (*intended husband*) and (*intended wife*) his intended wife, at any time during their joint lives, in or by any deed or deeds, writing or writings, with or without power of revocation, to be by them both sealed and delivered in the presence of and attested by two or more credible witnesses, shall direct or appoint; and in default of such last-mentioned direction,” &c. *as above*.

Or,

“And for want of such joint appointment, then as the survivor of them, after the decease of him or her first dying, shall by any deed,” &c. *as ante*, p. 595. n. (1).

— (2) If it be wished that the form should be as concise as possible, add here (omitting the proviso, *post*, p. 601. marg. *.)

Concise form.

“And to be transferred or assigned to him or her at or on such age, day, or time accordingly, if the same shall happen after the decease of the survivor of the said (*intended husband*) and (*intended wife*); but if the same shall happen in the lifetime of them or of the survivor of them, then immediately upon or after the decease of such survivor.”

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

the same shall not take effect, or shall not be a disposition or appointment of the whole of the said trust funds and premises, then as to the same or so much thereof of or concerning which no such disposition or appointment shall be made or take effect, UPON TRUST for [and to pay, assign, and transfer the same bank annuities, and the stocks, funds, and securities, and dividends, and interest, (subject to the trusts and purposes hereinbefore declared concerning the same), unto, between, and amongst such] two or more children, or the issue of any one or more of such children who may happen to die, leaving issue, or any one or more of such children, or of the issue of such children, in exclusion of any other or others of them, in such parts, shares, and proportions, at such ages, days, or times, with such maintenance in the mean time, and under and subject to such conditions, restrictions, and limitations over (such limitations over being for the benefit of some or one of such children or issue), as she the said (*intended wife*) (1) if she shall survive the said (*intended husband*) her intended husband, by any deed or deeds, writing or writings, with or without power of revocation, to be by her signed,

Appointment by survivor.

(1) If the power of appointment be given to the survivor, say,

“As the survivor of them the said (*intended husband*) and (*intended wife*) his intended wife, and as to the said (*intended wife*) whether she shall be then sole or covert with or by any future husband, shall by any deed,” &c. *as above.*

sealed, and delivered in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any writing purporting to be, or being in the nature of, her last will and testament, or any codicil or codicils thereto, to be by her signed and published in the presence of and attested by three or more credible witnesses, shall, whether covert or sole, direct or appoint; and in default of any such direction or appointment, or in case of any such being made, and the same shall not take effect, or shall not be a disposition or appointment of the whole of the said trust funds and premises, then as to so much thereof of or concerning which no such disposition or appointment shall be made or take effect, IN TRUST for [and to pay, assign, and transfer the same bank annuities, and the stocks, funds, and securities, and the dividends, interest, and growing proceeds thereof, unto, between, and amongst] all and every of the children of the said intended marriage, equally to be divided between and amongst them, if more than one, share and share alike as tenants in common, and their respective executors, administrators, and assigns, subject only to such survivorship as hereinafter is mentioned (1), at the ages or times following (that

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

In default of appointment.

To the children equally.

(1) The following form may, if preferred, be substituted for Variation. that in the text :

“ In the manner following, that is to say, the portion or share, or respective portions or shares, of such of the said

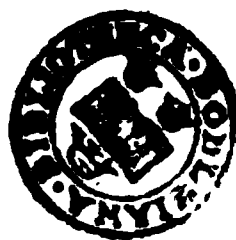
SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

is to say) the share or respective shares of such of them as shall be a son or sons, at his or their age or respective ages of twenty-one years; and of such of them as shall be a daughter or daughters, at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen, in case such ages or days shall not take place till after the decease of the survivor of them the said (*intended husband*) and (*intended wife*); but in case the same

children, being a son or sons, as shall be under the age of twenty-one years, at the decease of the survivor of them the said (*intended husband*) and (*intended wife*) as and when he or they shall attain that age, and the portion or share, or respective portions or shares, of such of the said children, being a son or sons, as shall attain the age of twenty-one years, in the lifetime of the said (*intended husband*) and (*intended wife*) or of the survivor of them, to be paid at the end of six calendar months next after the decease of such survivor, with interest for the same after the rate of £ per cent. until payment thereof; and the portion or share, or respective portions or shares of such of the said children, being a daughter or daughters, as shall be under the age of twenty-one years and unmarried at the decease of the survivor of them the said (*intended husband*) and (*intended wife*) as and when she or they shall attain that age or be married, and the portion or share, or respective portions or shares of such of the said children, being a daughter or daughters, as shall attain the age of twenty-one years or be married in the lifetime of the said (*intended husband*) and (*intended wife*), or of the survivor of them, to be paid at the end of six calendar months next after the decease of such survivor, with interest for the same after the rate aforesaid, until the same shall be paid."



shall happen in the lifetime of them the said (*intended husband*) and (*intended wife*) or of the survivor of them, then such payment, transfer, or assignment to be postponed until after the decease of such survivor. [PROVIDED ALWAYS (1), and it is hereby declared and agreed, that the share or shares of such of the said children, or of such child as shall be a son or sons, of and in the said sum of £ , three per cent. consolidated bank annuities, and the funds and securities, and dividends and interest thereof, shall, in default of any such appointment as aforesaid, and as to so much thereof respectively, of which none such shall be made or take effect, be considered as a vested interest and vested interests in him or them respectively, upon his or their attaining the age or respective ages of twenty-one years, and in such of them as shall be a daughter or daughters upon her or their attaining the age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen, [and upon their respective deaths go and belong to their respective personal representatives in like manner as if the survivor of them the said (*husband*) and (*wife*) had been then dead,] although the said (*intended husband*) and (*intended wife*) or either of them, shall be then living, (so nevertheless that in case of the marriage of any

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

Time of children's portions vesting.

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(1) See *ante*, p. 597. n. (2).

Brevity.

SETTLEMENTS.**MARRIAGE.***Money in the Funds, &c.*Survivorship
between the
children.

such daughter or daughters during the lifetime of the said (*intended husband*) and (*intended wife*) or of the survivor of them, the same shall be had with their, his, or her consent) notwithstanding the payment, transfer, or assignment thereof is to be postponed till after the decease of the survivor of them, as aforesaid.] PROVIDED ALWAYS (1), that if any such child or children, being a son or sons, shall depart this life before he or they shall have attained his or their age or respective ages of twenty-one years, or before he shall have acquired a vested interest under or by virtue of any such appointment as aforesaid, or if any such child or children, being a daughter or daughters, shall depart this life before she or they shall have attained the age or respective ages of twenty-one years, without having been married with such consent as aforesaid, then and in every such case all and every the share and shares hereby intended for such child or children so dying as aforesaid, of and in the said sum of £ , three per cent. consolidated bank annuities, and other the trust monies, funds, and securities, as aforesaid, shall, from time to time, upon such his, her, or their

Brevity,

(1) If brevity be desired, say,

“ If any such child or children shall depart this life before the share or portion of him, her, or them, of and in the said sum of £ , three per cent. consolidated bank annuities, shall have become a vested interest, then and in such case,” &c. *as above*.

death, or respective deaths, and in default of such appointment, as aforesaid, go and accrue to the survivors and survivor, or others and other of the said children, share and share alike, and the same shall be considered as a vested interest or vested interests, and be payable, transferrable, and assignable at the same respective ages, days, or times, and go in the same manner to, between, and amongst such surviving and other children or child then in being, as is hereinbefore declared or expressed concerning his, her, or their original share or shares; and the share or shares so accruing to such children or child shall, from time to time, again be subject and liable to a further and like right, chance, contingency, or condition of accruer and survivorship, to the others and other or future survivors and survivor of them, as is hereinbefore declared or expressed concerning his, her, or their original share or shares. AND it is hereby declared and agreed, that in case any appointment shall be made in pursuance of either of the powers aforesaid, which shall not extend to the whole of the said trust premises, the same shall be good and effective, although no appointment shall be made of the residue thereof. PROVIDED ALWAYS nevertheless, that no child or children or other issue of the said intended marriage, who shall receive any part or share of or in the said trust monies, funds, and securities under or by virtue of any such direction or appointment, as aforesaid, shall as against or to the prejudice of his, her, or their brother or sister, or brothers or

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

Accruing shares to survivors.

Partial appointment to be good.

Advanced shares to be brought into hotchpot.

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

Provision for maintenance, &c.

sisters, unless it be otherwise declared in or by such appointment, be entitled to any further or other part or share of or in the same trust premises, or the residue or unappointed part thereof, until he, she, or they shall have brought into hotchpot the part or share which shall have been by him, her, or them received and accounted for the same, by way of abatement, from his, her, or their part or share under the trusts hereinbefore declared or expressed concerning the said premises, in case of no appointment being made thereof. PROVIDED ALWAYS, and it is hereby declared and agreed by and between the parties hereto, that (1) in the meantime and until the share or shares of any or either of the children [or other issue] of the said intended marriage shall become a vested interest or vested interests under or by virtue of these presents (2), they the

(1) Or say,

Variation.

“In case any or either of the said children shall be under the age of twenty-one years, being a son or sons, or under that age, and unmarried, being a daughter or daughters, at the time of the decease of the survivor of the said (*intended husband*) and (*intended wife*) his intended wife, then and in such case they the said (*trustees*) shall,” &c. *as above*.

Brevity.

(2) If brevity be particularly desired, the powers of maintenance and education may be united; in which case, say,

“Do and shall pay and apply the dividends, interest, and annual proceeds to arise from the portion or share, or presumptive portion or share of each of the same children, grandchildren, or issue, or any part thereof, or the principal

said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their or his assigns, are hereby required after the decease of the survivor of the said (*intended husband*) and (*intended wife*), and in default of any direction or appointment contrary to this present provision, to pay and apply such part of the interest, dividends, and annual proceeds of the share or shares, or presumptive share or shares, of any or either of the same children, as they the said trustees or trustee shall in their or his discretion think proper, or the whole thereof, if he or they shall think fit, for or towards the maintenance and education of such child or children or other issue, and permit and suffer the surplus or saving thereof, if any, to accumulate for the benefit of such person or persons as shall become entitled thereto, for the time being, by virtue of these presents, save only and except that the saving or surplus of any one year or years shall or may be applicable and applied to answer and make good the occasions or deficiencies which may arise in any subsequent year or years for any of the said purposes. AND further, that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of

SETTLE-
MENTS.

MARRIAGE.

Money in the
Funds, &c.

And advance-
ment.

of such portion or share, or any part thereof, at or according to the discretion of such trustees or trustee, in, for, or towards the maintenance and education or the advancement in the world of the same child, grandchild, or issue, in such manner as the same trustees or trustee shall think fit."

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

such survivor, and their and his assigns, shall or lawfully may, at any time or times, and from time to time, during the joint lives of the said (*intended husband*) and (*intended wife*) or the life of the survivor of them, if they, or the survivor of them, shall so order and direct, and after the decease of the survivor of them, of the sole authority of the said trustees or trustee, sell out, and pay, apply, and dispose of the whole or any part of the share or shares hereby intended for any such child or children, of or in the said stocks, funds, and securities, for the purchasing a commission in the army for him or them, being a son or sons, or for putting him, her, or them, whether a son or sons, or daughter or daughters, an apprentice or apprentices, or pupil or pupils, to any trade, business, profession, or employment, or otherwise, for his, her, or their preferment or advancement in the world, notwithstanding the same share or shares shall not have then become a vested interest or vested interests in him, her, or them, under or by virtue of these presents (1). AND it is hereby declared and agreed by and between the said parties hereto, that in case there shall be no child of the said intended marriage, who, being a son, shall attain his age of twenty-one years, or being a daughter, who shall attain

In default of children.

Trustees to lend husband a sum of money.

(1) If the trustees are to have a power of lending the husband a part of the trust-money; see *ante*, No. V. p. 563: n. (2).

her age of twenty-one years, or be married with such consent as aforesaid, then and in such case (1) they the said (*trustees*) and the survivors and sur-

SETTLE-
MENTS.

MARRIAGE.

Money in the
Funds, &c.

In default of
children, to
wife absolutely.

(1) If the property be the wife's, and it be intended that on failure of issue it should go to her absolutely, say,

“UPON trust that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their and his assigns, do and shall, after the decease of the said (*intended husband*), pay, assign, and transfer the said sum of £ , three per cent. consolidated bank annuities, and the stocks, funds, and securities for the same, with all dividends, interest, and annual proceeds to become due and payable in respect thereof, unto such person or persons, and in such parts, shares, or proportions, and in such manner and form, and for such intents and purposes as the said (*intended wife*), at any time or times, and either before or after the failure of such issue, and as well when covert as sole, and notwithstanding her coverture by her present intended husband, (but subject to his said life-interest therein) or any future husband, by any deed or instrument in writing, to be sealed and delivered by her in the presence of, and attested by two or more credible witnesses, or by her last will and testament in writing, or any writing in the nature of or purporting to be her last will and testament, or any codicil or codicils thereto, to be severally signed and published by her in the presence of, and attested by three or more credible witnesses, shall direct or appoint; and in default of any such direction or appointment, or in case any such shall be made, then when and as the estates or interests thereby to be directed or appointed shall respectively end or determine, and as to so much of the trust-monies, stocks, funds, and securities, of or to which no such direction or appointment shall be made or extend, IN TRUST for such person or persons as at the time of the decease of the said (*intended wife*)

SETTLEMENTS.

MARRIAGE.

*Money in the
Funds, &c.*

To husband
absolutely.

vivor of them, and the executors and administrators of such survivor, and their and his assigns, shall stand possessed of and interested in the said sum of £ , three per cent. consolidated bank annuities, and other the stocks, funds, and securities aforesaid, with all dividends, interest, and annual proceeds from thenceforth to become

shall be, or would have been her next of kin, under and according to the statute made for the distribution of the estates of persons dying intestate, if she had died unmarried and intestate."

Moiety to husband.

If it be agreed that upon failure of issue of the marriage, the property shall be divided between the husband and wife, say,

"UPON TRUST as to and concerning one moiety or half part (*or as agreed*) of and in the said sum of £ , three per cent. consolidated bank annuities, and the stocks, funds, and securities of or for the same, and all dividends, interest, and annual proceeds thereof, that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their and his assigns, do and shall pay, assign, and transfer the same respectively, upon and after the decease of the said (*intended wife*), unto the said (*intended husband*), if then living, or if dead, then to his executors, administrators, and assigns, to and for his and their own use and benefit; and as to and concerning the other moiety or half part of and in the same stocks, funds, securities, and dividends, interest and proceeds, IN TRUST to pay, assign, and transfer the same, upon and after the decease of the said (*intended husband*), unto the said (*intended wife*), if then living, or if dead, to her executors, administrators, and assigns, to and for her and their own use and benefit."

due and payable in respect of the same respectively, UPON TRUST to pay, assign, and transfer the same unto the said (*intended husband*) (1), if then living, or if then dead, then to his executors, administrators, or assigns, to and for his and their own absolute use and benefit. PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties hereto, that it shall be lawful for the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their or his assigns, at any time or times, and from time to time during the lifetime and with the approbation or consent of them the said (*intended husband*) and (*intended wife*) or of the survivor of them, to besignified by some writing under their, his, or her hands or hand, and after the decease of the survivor of them, then at or by the proper authority and sole discretion of the said trustees, (but not of any one only trustee) during the minority of any child or children of the said marriage, to sell or transfer and dispose of the said principal sum of £ , three per cent. consolidated bank annuities, or any part thereof, or other the funds and securities in or upon which the same or any part thereof shall, for the time

SETTLEMENTS.

MARRIAGE.

Money in the Funds. &c.

General power of changing securities.

(1) If the estate be the wife's, the husband is not entitled to it under a limitation to her next of kin, or personal representative, in default of appointment: *Baily v. Wright*, 18 Ves. 49, 1 Swanst. 39, S. C. confirmed on appeal. If, therefore, this be intended, it must be expressly so declared.

Wife's estate.

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

Power to invest the trust-monies in the purchase of land.

being, be vested, (or so much thereof as shall not then have been applied or applicable under the said trusts), for the then current or market price thereof, and to lay out and invest the monies to arise from such sale, transfer, or disposition, in the , &c. in the purchase of the like or any other stocks, funds, or securities, or upon other government or upon real securities, in their or his names or name, at interest; and by and with such approbation and consent, or of such sole authority as aforesaid, from time to time to transfer, change, or vary such other stocks, funds, and securities, or any of them, as and when the same shall be deemed expedient, all and every which said new stocks, funds, and securities, and the dividends and interest thereof, shall at all times be upon, under, and subject to such and the same trusts, provisos, powers, declarations, and agreements, as are hereinbefore declared or expressed concerning the said sum of £ three per cent. consolidated bank annuities, or such and so many of them as shall from time to time be existing or capable of taking effect. AND also [for them the said trustees or trustee] with such approbation or consent, or of their own authority, [at any time or times hereafter during the continuance of the aforesaid trusts, to sell out and transfer the same sum of £ three per cent. consolidated bank annuities, or any part or parts thereof, and other the stocks, funds, and securities in or upon which the same or any part thereof shall or may, for the time being, be placed out or

invested, and] to lay out and invest all or any part of the monies to arise from such sale or transfer, in the purchase of any manors, messuages, lands, or hereditaments, either freehold, copyhold, or leasehold, to be situated in that part of the United Kingdom of Great Britain and Ireland called England, so that no greater part or proportion than one-fourth part of the said hereditaments shall be copyhold, nor any greater part or proportion than one-fourth part thereof leasehold, nor any of such leaseholds be holden for less than a term of years from the time such purchase or respective purchases shall be made; all which said manors, messuages, lands, and hereditaments, shall, as soon as conveniently may be thereafter, be conveyed and assured [unto and to the use of, or otherwise vested in the said trustees or trustee for the time being of these presents, their or his heirs, executors, or administrators respectively, according to the natures of such estates] (1), and in the mean time they and every

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

(1) Or it may be,

“By and with such consent, &c. as aforesaid, to lay out and invest the money to arise, &c. in the purchase of one or more annuity or annuities, for one or more life or lives, to be secured upon freehold, copyhold, or leasehold hereditaments, or upon bank annuities of sufficient value, and to insure and keep insured the life or last surviving life upon which every such annuity shall be held; and upon the repurchase of any such annuity, or upon the cesser thereof by the death or respective deaths of the *cestui que vie* or *cestuis que vie*, shall and do apply the repurchase money,

To invest on annuities.

SETTLE-
MENTS.

MARRIAGE.

*Money in the
Funds, &c.*

of them shall stand seised or possessed of the same, and of the rents, issues, and profits thereof, upon such and the same trusts, and for such and the same intents and purposes, and charged and chargeable in the same manner, and with, under,

or the money to be received under or by virtue of any policy or policies of insurance, upon such trusts, and under such directions as are in and by these presents expressed and declared of and concerning the monies to arise by the sale, transfer, or disposition of the aforesaid £ four per cent. consolidated bank annuities. AND it is hereby agreed and declared, that they the said trustees, and the survivors and survivor of them, and the executors or administrators of such survivor, and other the trustees or trustee of the trust premises for the time being, shall and do, by, with, and out of the said annuity or annuities so to be purchased as aforesaid, in the first place pay the fines and sums of money which shall be requisite or necessary for insuring and keeping insured the life, or last surviving life upon which any such annuities shall be held, for a sum of money equal to the purchase of such annuity. AND also shall and do (subject and without prejudice to the payment of such fines and sums of money) stand possessed of and interested in such annuity or annuities, upon the trusts hereinbefore declared, of and concerning the dividends and annual produce of the said £ four per cent. consolidated bank annuities. AND also shall and do stand possessed of and interested in all and every such new or other stocks, funds, and securities as aforesaid, and the dividends, interest, and yearly produce of such stocks, funds, and securities, and of every part thereof, upon the trusts hereinbefore expressed and declared of and concerning the same £ four per cent. consolidated bank annuities, and the dividends and yearly produce thereof, or as near thereto as the deaths of parties and other circumstances will permit."

and subject to such and the same powers, provisos, limitations, declarations, and agreements, as are hereinbefore declared or expressed concerning the said sum of £ three per cent. consolidated bank annuities, and the dividends, interest, and annual proceeds thereof, or as nearly thereto as the rules of law and equity, the death of parties, and other contingencies will permit; and so from time to time, by and with the same or the like approbation or consent, or of such sole authority and discretion as aforesaid, to re-sell and convey and assure the manors, messuages, lands, and hereditaments so to be purchased, or any part or parcel thereof, for the best price or prices that can, in the opinion of such trustees or trustee, be reasonably obtained or expected for the same, unto any person or persons whomsoever, and although any such person be tenant for life thereof under the trusts of these presents, not excepting him the said (*intended husband*) (1). AND in case it shall so happen that the messuages, &c. so to be purchased shall be more than equivalent to the value of the said bank annuities, so that the same shall not be sufficient to complete the purchase thereof, it is hereby declared that the residue of the money necessary to complete such purchase may be raised by mortgage of all or any part of the same premises, and that such mortgage shall

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

(1) See *ante*, p. 361, n. (1).

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

precede and have priority over the uses to which the said premises are hereinbefore directed to be conveyed. AND it is hereby declared and agreed by and between the parties hereto, that they the said trustees or trustee for the time being shall stand possessed of and interested in the monies to arise from such sale or transfer of the said bank annuities as aforesaid, until the same shall be laid out or invested in such purchase or purchases as aforesaid, and also of the rents, issues, and profits of any such manors, messuages, lands, tenements, or hereditaments, which shall be purchased therewith, upon such and the same trusts, and to and for such and the same ends, intents, and purposes as the same bank annuities or other the said funds or securities, or the dividends or interest thereof respectively were subject to, before the same were so laid out or invested, or would have been subject to, in case such purchase or purchases had not been made, it being the intent and meaning of the parties to these presents, that the hereditaments so to be purchased shall, when purchased, be considered in all respects, and to all intents and purposes, as money and not as real estate (1); and it is hereby further declared and agreed, that all and every

Purchasers not to see to the application of the money.

Money when considered as land.

(1) Money directed to be invested in the purchase of land will, unless otherwise declared, be considered as land, and assume the properties of real estate: see *Lechmere and Carlisle*, 3 P. Wms. 211, and cases cited, 1 Elem. Conv. 2d edit. cap. I. sec. 1.

the purchasers or purchaser of any manors, messuages, lands, tenements, or hereditaments, which shall be sold under the provision hereinbefore last contained, shall, upon payment of his, her, or their purchase-money or purchase-monies, and obtaining a receipt or receipts for the same from the said trustees or trustee, or of the only acting trustees or trustee for the time being, of the said trust property, be wholly and absolutely acquitted and discharged of and from the same purchase-money or purchase-monies, and shall not afterwards be called upon or be obliged or liable to see to the application thereof, or in any wise answerable for the mis-application or non-application of the same, or any part thereof (1). PROVIDED ALWAYS, and it is hereby further declared and agreed by and between the parties hereto, that in case the several trustees in or by these presents named or appointed, or any of them, or any succeeding or other trustees or trustee of the said trust premises, to be nominated or appointed as hereinafter is mentioned, shall depart this life, or be desirous to be discharged from the execution of the aforesaid trusts, or shall be about to reside abroad, or shall refuse, or neglect, or become incapable to act in the said trusts before the same shall be fully performed or determined, it shall be lawful for the said (*intended husband*) and (*intended*

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

Power of appointing new trustees.

(1) Here may be added a power to lease the premises when purchased: see *ante*, p. 459. Power to lease.

SETTLE-
MENTS.

MARRIAGE.

*Money in the
Funds, &c.*

wife) (1) his intended wife, during their joint lives, and for the survivor of them after the decease of the other of them, and after both their deaths, then to and for the surviving, or continuing, or only acting trustees or trustee for the time being, with the consent of the guardian or guardians, if any, of the children or only child of the said intended marriage, and if none, then of their or his own authority, at any time or times, and from time to time as often as there shall be occasion, to nominate, substitute, or appoint any other person or persons to be a trustee or trustees in the place or stead of the trustees or trustee so dying, desiring to be discharged, or about to reside abroad, or neglecting or becoming incapable to act as aforesaid, for all or any of the purposes in these presents mentioned, and then remaining unfulfilled or undetermined; and when and as often as any such trustee or trustees shall be so nominated, substituted, or appointed as aforesaid, all and singular the trust-monies, stocks, funds, and securities aforesaid, and all other stocks, funds, and securities, manors, messuages, lands, tenements, and hereditaments, in or upon which the same, or any part thereof, shall or may, for the time being, be invested, shall with all convenient speed be assigned, transferred, conveyed, and assured so and in such manner as that the same

Separate trustees for husband and wife.

(1) If separate trustees are appointed on the part of the husband and wife respectively, see *ante*, No. II. p. 390, n. (1).

shall and may become vested in such surviving and continuing and such new trustees or trustee, or in such new trustees only, as the case may be, upon the trusts, and for the ends, intents, and purposes hereinbefore declared or expressed concerning the same respectively, or such of them as shall be then subsisting or capable of taking effect, all and every which new trustee or trustees shall and lawfully may act in the execution of the said trusts as fully and effectually to all intents and purposes whatsoever, and with the same or like powers, authorities, and indemnifications in all respects as if he or they had been originally appointed a trustee or trustees by these presents.

PROVIDED ALSO, and it is hereby likewise declared and agreed by and between the said parties hereto, that it shall be lawful for all and every the trustees and trustee for the time being of these presents, or of the said trust premises, or any part thereof, from time to time to deduct and retain to and for himself and themselves respectively, and also to allow and pay to his and their co-trustees or co-trustee, or to his or their executors or administrators, by and out of all or any of the trust-mones which, by virtue of these presents, [or any of the trusts or powers herein contained,] shall come to their or any or either of their hands respectively, all such costs, charges, damages, and expenses whatsoever, as they or any or either of them respectively shall pay, bear, sustain, expend, or be put unto, in, or about the execution of the trusts

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

Trustees may reimburse their expenses.

**SETTLE-
MENTS.****MARRIAGE.***Money in the
Funds, &c.*

Not to be an-
swerable for
each other.

of these presents, or any of them, or in any wise relating thereto, which said costs, charges, and expenses shall be regulated and allowed as between solicitor and client, and not as between party and party. And further, that they or any or either of them the said (*trustees*) their or any or either of their respective executors or administrators, shall not be answerable or accountable for the other or others of them, or for the acts or defaults of the other or others of them, but each for himself only and for his own acts and defaults; nor shall they or any or either of them be charged or chargeable with or for any further or other sum or sums of money than what shall actually come to his or their own respective hands, by virtue of the trusts aforesaid, notwithstanding their or any or either of them joining in any receipt or other acquittance for the sake of conformity only, or for the greater satisfaction only of the person or persons paying the same, nor with nor for any loss which may happen in placing out or investing all or any of the said trust-monies, in or upon any such stocks, funds, securities, or purchases, or in changing or varying the same, or any part thereof, under or in pursuance of the powers hereinbefore contained, whether by reason of the rise or fall of stock, or the insufficiency or deficiency of any security or securities, in or upon which the said money may be invested, or in depositing the same in any bank or banker's hands, or elsewhere for safe custody, or otherwise in the due execution of

any of the trusts or powers hereinbefore contained, save only and except the same shall happen by or through their or his own wilful default or negligence. AND the said (*intended husband*) doth hereby for himself, his heirs, executors, and administrators, and every of them, further covenant, promise, and agree, with and to the said (*trustees*) their executors, administrators, and assigns, in the manner following, that is to say, that he the said (*intended husband*) his executors and administrators, shall and will from time to time, and at all times after the solemnization of the said intended marriage, upon every reasonable request to him or them made for that purpose, but at his and their own costs and charges, make, do, and execute, or cause and procure to be made, done, and executed, and join and concur in making, doing, and executing all and every such further and other lawful and reasonable act and acts, deed and deeds, transfers, assignments, and assurances in the law whatsoever, for the further and better or more satisfactorily confirming and corroborating these presents, and all and every or any of the powers, authorities, declarations, and agreements herein contained, and for the better enabling the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of the survivor, and their and his assigns, and other the trustees or trustee for the time being acting under these presents, to obtain and get in and receive the same, and execute and perform the several

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

Covenant by husband for further assurance.

SETTLE-
MENTS.

MARRIAGE.

Money in the
Funds, &c.

Provision for
wife to be in
lieu of dower.

trusts hereby in them or him reposed, or intended to be reposed relative thereto, according to the true intent and meaning of these presents, as by such trustees or trustee, or any or either of them, or any person or persons who, for the time being, shall be beneficially interested in the said trust property and premises, or his, her, or their counsel in the law, being of the degree of a barrister, shall be reasonably desired, or advised and required (1). AND it is hereby lastly declared and agreed by and between all the said parties to these presents, that the provision hereby made for the said (*intended wife*), upon the event of her surviving the said (*intended husband*), her intended husband, shall be, and she doth hereby accept the same in lieu, bar, and full satisfaction of and for all dower and thirds at the common law, or by custom, or otherwise, which she the said (*intended wife*) can or may, or otherwise might have, claim, or be entitled to, in, or out of all or any of the manors, messuages, lands, tenements, hereditaments, or other property whatsoever, whereof he the said (*intended husband*) now is, or at any time hereafter during the said intended coverture, shall or

Future ac-
quired property
to be settled.

(1) If it be agreed that any future property which may be acquired by the husband or wife shall be settled upon the trusts of the present settlement, see *ante*, No. II. p. 376, n. (1); and see also No. IV. p. 519.

Wife to dispose
of her para-
phernalia.

If the wife is to have power to dispose of her paraphernalia, see *ante*, No. III. p. 480; No. IV. p. 523.

may be seised or possessed of any estate of inheritance in possession, or for any other dowable estate or interest whatsoever (1). IN WITNESS, &c.

SETTLEMENTS.

MARRIAGE.

Money in the Funds, &c.

(1) If it be intended that the provision for the wife shall not affect her title to dower, instead of the above declaration, insert here the variation subjoined to No. III. p. 490, note.

Settlement not to prejudice wife's title to dower.

. See various other provisos, &c. which may be introduced where required by the agreement of the parties ; *ante*—No. IV. pp. 505, 525, *et seq.* and No. V. pp. 538, 575, *et seq.*

Other provisos, &c.

SETTLEMENTS:

MARRIAGE.

Freeholds, Copyholds, Leaseholds, and Money in the Funds.

No. VII.

Marriage Settlement of Freehold, Copyhold, and Leasehold Property, together with Money in the Funds and other Personalty (1).

Variations where Part or the Whole of the settled Estates is the Property of the Wife.

Where the Estate or Part (being Freehold or Copyhold) is settled by the Father of the Husband or Wife.

Where the Owner is Tenant in Tail of the Freehold or Copyhold Part.

Where he took the Freeholds to himself and a Trustee to prevent Dower.

Where he is entitled to a Moiety or other Portion only of the Estates, whether Freehold, Copyhold, or Leasehold.

Where he is entitled in Remainder or Reversion only.

Where the Leasehold Premises are holden for Lives or for Years determinable upon Lives.

Where the Money in the Funds is a reversionary Interest.

Where Part of the Property is Money outstanding upon Mortgage or other Securities.

Where the Wife's Portion or a Part of it is secured to be paid at a future Time, &c.

THIS INDENTURE, of _____ parts, made the
day of _____ in the _____ year of the

Distinct settlement of each kind of property.

(1) Where the property to be settled is of very considerable value, and consists (as supposed in the above form) of estates

reign, &c. and in the year of our Lord
BETWEEN (1) (*the intended husband*) of, &c.
of the first part, (*the intended wife*) of, &c.
of the second part (2), and (*the trustees*) (3) of,
&c. , trustees named and appointed for the
purposes hereinafter mentioned, of the third part.
WHEREAS a marriage hath been agreed upon and
is intended shortly to take place between the said
(*intended husband*) and the said (*intended wife*).
AND WHEREAS (4) the said (*intended husband*) is
seised in his demesne as of fee by descent of his

SETTLEMENTS.
NARRIAGE.
Freeholds, Copyholds, Leaseholds, and Money in the Funds.
Recital of intended marriage.
Recital of scisin of freeholds and copyholds.

of various kinds, or of distinct family estates proceeding respectively from the husband and the wife, they are frequently, on failure of issue, limited apart from each other, in which case it is usual to settle the real and personal property, or the estates of the husband and of the wife, by separate instruments; but where the property is of less amount, and the whole settled in the same course, they are generally comprised in the same instrument. To which mode the above form is adapted.

- (1) If the father of the intended husband or wife be a party for the purpose of settling any part of the estate, or covenanting to pay the wife's fortune at a future time, make him a party of the first part.
- (2) If the husband be tenant in tail of the freehold lands intended to be settled, make the tenant to the præcipe a party of the third part, and the trustees of the fourth part.
- (3) It will be advisable, for the reason given in a preceding note, that there should be at least *three* trustees appointed in regard to the money in the funds.
- (4) Where the father is tenant for life, and the son tenant in tail under a former marriage settlement, recite such settlement, as in No. II. p. 283, n. (2).
- If the husband took the estate to himself and a trustee to prevent dower, recite here the deed by which it is so limited to

Father a party.
Husband tenant in tail.
Number of trustees.
Tenant in tail.
Husband and trustee.

SETTLEMENTS.

MARRIAGE.

Freeholds, Copyholds, Leaseholds, and Money in the Funds.

Recital of lease.

ancestors, of the freehold messuages, lands, tenements, and hereditaments hereinafter described; and seised to him and his heirs according to the custom of the manor of , of the customary or copyhold lands and hereditaments hereinafter covenanted to be surrendered. AND WHEREAS by virtue of an indenture of demise or lease bearing date the day of , which was in the year , and made or expressed to be made between A. B. (*the lessor*) therein described, of the one part, and the said (*intended husband*) of the other part, the said (*intended husband*) is possessed of the several leasehold messuages or tenements, pieces or parcels of ground and premises hereinafter assigned (1) for the term of years, from the day of (2), at the yearly rent of £ , and under and subject to the covenants and agreements therein contained (3).

him, stating the power of appointment nearly *verbatim*, as *ante*, p. 406. rider (B).

Lease for years.

(1) If the lease be for a life or lives, say,

“For the term of the natural lives of (*the nominees*) of, &c. , and the natural life of the longest liver of them, at the yearly rent of £ ,” &c. *as above*.

Lease for years determinable upon lives.

(2) If the lease be determinable upon lives, say,

“For the term of years from the day of , if (*the nominees*) therein named, or any or either of them, shall so long live, at the yearly rent of ,” &c. *as above*.

Husband an assignee only.

(3) If the intended husband be an assignee only of the premises, recite here the assignment to him.

AND WHEREAS the (*intended husband*) is entitled to the sum of £ , three per cent consolidated bank annuities (1). AND WHEREAS upon the treaty for the said intended marriage, it was agreed that the said several freehold, copyhold, and leasehold estates of him the said (*intended husband*), and also the said sum of £ three per cent. consolidated bank annuities, should be respectively settled, conveyed, and assured upon the trusts, and in the manner hereinafter mentioned. AND WHEREAS in pursuance and part performance of the said agreement, the said sum of £ , three per cent. consolidated bank annuities, hath been this day transferred into the joint names of the said (*trustees*), in the books of the Governor and Company of the Bank of England kept for that purpose. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, as to and in respect of the freehold hereditaments intended to be hereby settled, and in consideration of the said intended marriage, and for making a provision for the said (*intended wife*) in case the said marriage shall take effect,

SETTLEMENTS.
MARRIAGE.
Freeholds, Copyholds, Leaseholds, and Money in the Funds.
Of transfer of stock.
WITNESS, that in consideration of the marriage.

(1) If the property intended to be settled consist of a reversionary interest in bank annuities, recite here the deed or will under which the settler claims.

If the wife's fortune or any part of it be secured by the bond of her father, recite here such bond, as ante, No. VI. p. 581, n. (2).

If part of the property to be settled consist of money due upon mortgage, recite the mortgage deed, as ante, No. VI. p. 582, notes.

SETTLEMENTS.	and she shall survive the said (<i>intended husband</i>) her intended husband, and for the issue, if any, of the said marriage (1), and for other the ends and purposes hereinafter expressed, and also in consideration of the sum of ten shillings of lawful current money of England, to the said (<i>intended husband</i>), in hand well and truly paid by the said (<i>trustees</i>) at the time of the execution of these presents, the receipt whereof is hereby acknowledged, HE (2) the said (<i>intended husband</i>) HATH granted, bargained, sold, aliened, and released, and by these presents DOTH grant, bargain, sell, alien, release, and confirm unto the said (<i>trustees</i>) (3) and their heirs, ALL, &c. (4) or howsoever otherwise the said several messuages or tenements, hereditaments and premises, or any of
MARRIAGE.	
Freeholds, Copyholds, Leaseholds, and Money in the Funds.	
The intended husband grants and releases.	
Parcels.	

Tenant in tail.	(1) If the intended husband be tenant in tail of the freehold lands agreed to be settled, see No. II. p. 289, n. (1).
Wife's estate.	(2) If the estate be the wife's, see <i>ibid.</i> p. 290, n. (2), p. 317, n. (1).
Father tenant for life, husband in tail.	If the husband's father be tenant for life, and he tenant in tail, see <i>ibid.</i>
Husband and trustee.	If the intended husband took the estate to himself and a trustee to prevent dower, see <i>ante</i> , No. II. p. 407, rider (C).
Estate tail.	(3) If the estates to be settled are intailed, the grant and release must be to the tenant to the præcipe for suffering the recovery, as <i>ante</i> , p. 409, rider (D).
Parcels.	(4) Here describe the subject of the conveyance by its ancient and present name, situation, tenancy, &c.; see <i>ante</i> , Vol. I. p. 405.
Moiety, &c.	If the conveyance be of a moiety or other portion only of the estate, see the mode of description in Vol. I. No. XXVI. p. 384.
Remainder, &c.	If it be of a remainder or reversion expectant upon the determination of a prior estate, see <i>ib.</i> No. XXIV. p. 346.

them, now are or is, or heretofore were or was situated, tenanted, called, known, described, or distinguished; and also all other the messuages, lands, tenements, and hereditaments, (if any) comprised in a certain indenture of bargain and sale for a year, hereinafter referred to as bearing date the day next before the day of the date hereof; TOGETHER with all (1) out-houses, yards, cellars, vaults, areas, lights, ways, water-courses, woods, common and commonage of every kind, and all and all manner of other rights, privileges, easements, advantages, appendages, and appurtenances whatsoever to the said hereditaments and premises belonging, or therewith holden, occupied, or enjoyed, (ALL which said messuages or tenements and hereditaments are now in the possession of, or legally vested in the said (*trustees*) by virtue of a bargain and sale (2) to them thereof made by the said (*intended husband*) (3) for five shillings consideration by indenture bearing date on the day next before the date of these presents, for the term of one year, commencing from the day next preceding the day of the date of the same indenture, and by force of the statute made for trans-

SETTLEMENTS.

MARRIAGE.

Freeholds, Copyholds, Leaseholds, and Money in the Funds.

General appurtenances.

Reference to the bargain and sale for a year.

(1) See general words applicable to different kinds of real property, INDEX *voce* GENERAL WORDS. General words.

(2) See the form of the bargain and sale for a year, Vol. I. Lease for a year. No. XIII. p. 110, and No. XIV. p. 117.

(3) If the father of the intended husband be a party, say, Father a party.
“By them the said (*father*) and (*intended husband*).”

SETTLEMENTS.

MARRIAGE.

Freeholds, Copyholds, Leaseholds, and Money in the Funds.

To hold to the trustees upon the trusts after mentioned.

ferring uses into possession), and the reversion and reversions, remainder and remainders, and rents, issues, and profits of the same premises; and all the estate, right, title, and interest whatsoever of him the said (*intended husband*) in, to, or concerning the same. To HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereinbefore described or referred to, and by these presents granted and released, or mentioned or intended so to be as aforesaid, with their and every of their rights, members, and appurtenances unto (1), and to and for the use and behoof of them the said (*trustees*) (2) their heirs and assigns; But NEVERTHELESS upon the trusts, and for the several ends, intents, and purposes, and under and subject to the several provisos, limitations, declarations, and agreements hereinafter declared or ex-

Limitation to uses.

(1) If it be intended that the freeholds should be limited to the use of the husband for life, or of the issue in tail, &c. or in any way different from the rest of the property, say,

“Unto the said (*trustees*) their heirs and assigns for ever, but to the uses nevertheless, upon the trusts, and for the several ends, intents, and purposes, and subject to the several provisos, limitations, declarations, and agreements hereinafter declared or expressed of or concerning the same, that is to say, TO THE USE of the said (*intended husband*), &c.”

And proceed as *ante*, p. 294, *et seq.* p. 447, *et seq.* or as agreed.

Tenant in tail.

(2) If the intended husband be tenant in tail of the lands agreed to be settled, see *ante*, No. II. p. 409, rider (D).

pressed concerning the same (1). AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the agreement aforesaid, with respect to the copyhold hereditaments of the said (*intended husband*), and for the ends and considerations aforesaid, HE the said (*intended husband*) for himself, his heirs, executors, and administrators, BOTH hereby covenant, promise, and agree with and to the said (*trustees*) their heirs and assigns, that in case the said intended marriage shall take effect, he the said (*intended husband*) or his heirs shall and will at or before the next general or other court, which shall be hereafter holden in or for the said manor of _____, or other the manor or manors, whereof the said lands and hereditaments are holden, at his and their own costs and charges, surrender or cause and procure to be surrendered into the hands of the lord or lords, or lady or ladies, of the same manor or manors, according to the custom or several customs thereof, ALL that copyhold or customary messuage, &c. (2) or by whatsoever other name or names, description or descriptions, the same copyhold or customary lands and hereditaments, or any or either of them, are or his, or have or hath been called, known,

SETTLEMENTS.

MARRIAGE.

Freeholds, Copyholds, Leaseholds, and Money in the Funds.

FURTHER WITNESS, covenant to surrender copyholds.

(1) If the intended husband took the estate to himself and a trustee to prevent dower, add here a covenant by such trustee, that he has done no act to incumber : for the form of such a covenant, see *ante*, p. 377, n. (1). Husband and trustee.

(2) Here describe the subject of the conveyance by its ancient and present name, situation, tenancy, &c. ; and see *ante*, p. 412, rider (E). Parcels.

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*Freeholds, Copy-
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described, or distinguished; **TOGETHER** with all and all manner of rights, privileges, easements, advantages, and appurtenances whatsoever to the said messuage or tenement, lands, hereditaments, and customary estate and premises, or any of them, or any part thereof respectively belonging, or in any wise appertaining, or reputed or deemed so to be, or with the same or any of them, now or heretofore holden, used, occupied, or enjoyed. **AND** it is hereby declared and agreed, that the said surrender or surrenders so covenanted and agreed to be made as aforesaid, shall, when perfected, be and enure (1) **TO THE USE** of them the said (*trustees*) their heirs and assigns, to be holden of the lord or lords, or lady or ladies, for the time being of the said manor or respective manors, according to the custom or customs of the same, subject only to the customary rents, dues, and services, to be respectively paid and performed in respect thereof; **BUT NEVERTHELESS** as to the estate and interest of them the said (*trustees*) their heirs and assigns, in trust only, and to and for the several ends, intents, and purposes hereinafter declared or expressed concerning the same. **AND THIS INDENTURE FURTHER WITNESSETH**, that in further pursuance of the said agreement, with respect to the leasehold premises of the said (*intended husband*), and for the purposes and con-

**FURTHER WIT-
NESS**, assign-
ment of lease-
holds.

Copyholds in
strict settle-
ment.

(1) If it be wished that the copyholds should be limited to uses in strict settlement, so far as the nature of the tenure will admit, see No. II. p. 412, rider (E); see also *post*, rider (A); see also *ante*, p. 525.

siderations aforesaid, He the said (*intended husband*) HATH (1) granted, bargained, sold, assigned, transferred, and set over, and by these presents DOTH grant, bargain, sell, assign, transfer, and set over unto the said (*trustees*) their executors, administrators, and assigns, ALL those the several messuages, or tenements, &c. (2), and all and singular other the premises comprised in and demised by the said hereinbefore in part recited indenture of lease (3); TOGETHER with all and singular the rights, members, and appurtenances to the same belonging, or in any wise appertaining or incident, and also the said indenture of demise or lease, and all mesne assignments, if any, thereof; and all the estate, right, title, interest, term or number of years now to come and unexpired, property, claim, and demand whatsoever, both at law and in equity, of him the said (*intended husband*) of, in, to, or respecting the same premises. TO HAVE AND TO HOLD the said several messuages or tenements, pieces or parcels of ground, and other the premises hereby assigned, or mentioned

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To hold to the trustees for the residue of the term.

(1) If the lease be for lives, it must (being a freehold interest) be conveyed either by lease and release or other conveyance under the statute of uses, or else by delivery of possession : see Vol. I. No. XXIII. p. 327; also *ante*, No. V. p. 544, notes.

Lease for lives.

(2) Insert here an exact description of the premises from the lease.

Parcels.

(3) If the intended husband be an assignee only of the premises, see *ante*, p. 543.

Husband an assignee.

If the lease be for years determinable upon lives, see *ante*, p. 544.

Years determinable upon lives.

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Subject to the rents and covenants in the lease.

Upon the trusts after-mentioned.

or intended so to be, with their respective appurtenances, unto the said (*trustees*) their executors, administrators, and assigns, from henceforth for all such residue or remainder of the said term or period of years, in and by the said in part recited indenture of lease granted, as is now to come and unexpired, by effluxion of time; SUBJECT nevertheless to the payment of the yearly rent thereby reserved, and to the observance and performance of the covenants and agreements which, on the tenant, lessee, or assignee's part, are thereby required to be paid, performed, or observed (1); BUT UPON THE TRUSTS nevertheless,

Joint limitations of freeholds and leaseholds.

(1) A variation has, in a preceding page, been referred to where the freehold part of the estates is intended to be limited in strict settlement. Where leaseholds are comprised in the same settlement, and intended to accompany the uses of the freeholds, they are sometimes assigned to the trustees.

*

“ Upon the same trusts, and to and for the same intents and purposes, and with, under, and subject to the same powers, provisos, conditions, restrictions, agreements, and declarations as are hereinbefore declared or expressed of or concerning the freehold lands and hereditaments hereinbefore granted and released, or otherwise assured, or mentioned or intended so to be, or as nearly thereto as the different species of property will admit.”

But such a reference to the limitation of the freeholds is evidently improper, as the effect would be to give the first son of the marriage an estate-tail in the premises, (or an estate analogous to it) immediately upon his birth; and upon his decease, intestate, they would go to his next of kin under the statute of distributions, and not to the person next in remainder under the limitation of the freeholds. If, therefore, it be intended that the leaseholds should accompany the intailed estate in the free-

and for the several ends, intents, and purposes,

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holds, distinct limitations of them should be inserted for that purpose, which must be so framed as either to prevent the estate limited to each child from vesting until it attain the age of twenty-one, or to determine it, if previously vested, on the child dying before that age; in which event the limitations over to the next younger child will take effect, it being holden (contrary indeed to former decisions, see *Barkhouse's case*, Pollexfen, 33. *Burgess's case*, 1 Mod. 115), that a term for years or personal chattels will admit of being limited to a person for life, with remainder by way of trust, to his children or others in tail, equally with estates of inheritance, so that they be not rendered unalienable for a longer period than a life or lives in being and twenty-one years afterwards, see *Massenburgh v. Ash*, 1 Vern. 304. *Higgins v. Dowler*, 1 P. Wms. 98. Co. Lit. 20, a. n. (5), and the authorities there cited, or in the words of Mr. Fearne, "whatever number of limitations there may be after the first executory estate of the whole interest, any one of them which is so limited that it must take effect (if at all) within twenty-one years after the period of a life then in being, may be good, in event, if no one of the preceding limitations which would carry the whole interest, happen to vest; but when once any preceding executory limitation which carries the whole interest happens to take place, that instant all the subsequent limitations become void." Fearne's Ex. Dev. 415, 4th edit. and *vid.* Pow. note there, p. 466, also Co. Lit. 290, n. (1), s. 10. Rob. on Wills, 584, n. Prest. Tracts, 74: likewise *Stanley v. Leagh*, 2 P. Wms. 696, and *Vaughan v. Burslem*, 3 Brow. Ch. Rep. 101. *Procter v. Bp. Bath and Wells*, 2 Hen. Blac. 358. *Duke of Newcastle v. Lincoln*, 3 Ves. jun. 327. See also *ante*, p. 538, notes, and p. 557, n. (1).

The form of a limitation of a chattel or personal interest, in order to its going to the issue in tail, together with the freeholds, may be as follows: Limitations of
chattels in tail.

"IN TRUST for the said (*intended husband*) his executors, administrators, and assigns, until the said intended marriage shall be had and solemnized; and from and immediately after the solemnization thereof, UPON TRUST that they the

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and under and subject to the provisos, declara-

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said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their and his assigns, do and shall stand possessed of and interested in all and singular the said messuages or tenements, pieces or parcels of ground, and other the said leasehold premises, IN TRUST for the said (*intended husband*) and his assigns, and to permit and empower him and them to have, receive, and take the rents, issues, and profits thereof during the residue which shall be then to come of the said term of years, if he the said (*intended husband*) shall so long live, to and for his and their own proper use and benefit; and from and immediately after the decease of the said (*intended husband*), during the continuance of the said term, IN TRUST for the said (*intended wife*) in case she shall be then living, and her assigns, and to permit and empower her or them to have, receive, and take the rents, issues, and profits of the said premises, during the residue which shall be then to come of the said term of years, in case she shall so long live; and from and after the decease of the survivor of them the said (*intended husband*) and (*intended wife*) his intended wife, IN TRUST for the first or only son of the body of the said (*intended husband*) on the body of the said (*intended wife*) his intended wife, lawfully to be begotten, who shall live to attain the age of twenty-one years, and when he shall attain that age, and the heirs male of the body of such son lawfully issuing; and upon and immediately after the decease of such first son of the body of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, under the age of twenty-one years, without leaving lawful issue male of his body begotten at the time of his decease, IN TRUST for the second, third, fourth, fifth, sixth, seventh, and all and every other the son and sons of the body of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, who shall attain the age of twenty-one years, and as and when

tions, and agreements hereinafter declared, ex-

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they shall severally attain that age, severally, successively, and in remainder one after another, as they and every of them shall be in seniority of age, and priority of birth, and the several and respective heirs male of the body and bodies of all and every such son and sons lawfully issuing, the elder of such sons so attaining the said age, and the heirs male of his body issuing being always preferred, and the younger of such sons, and the heirs male of his or their body or respective bodies issuing; and in default of such issue of the said intended marriage, IN TRUST for all and every the daughter and daughters of the body of the said (*intended husband*) on the body of the said (*intended wife*) his intended wife, lawfully to be begotten, if more than one, equally to be divided between them, share and share alike as tenants in common, and of the several and respective heirs of the body and bodies of all and every such daughter and daughters lawfully issuing, as and when they shall respectively attain the age of twenty-one years. PROVIDED ALWAYS nevertheless, that notwithstanding the postponement of any legal or vested interest in the said children respectively, all and every of the said son and sons shall nevertheless, during his and their minority or respective minorities, and until his or their decease or respective deceases, under the said age of twenty-one years, be entitled to have and receive the rents, issues, and profits of the same premises, to and for his and their own respective use and benefit, and UPON TRUST that they the said trustees and trustee do and shall pay and apply the same to and for his and their respective use and benefit accordingly; and in default of failure of such last mentioned issue of the said intended marriage, then UPON TRUST that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of the survivor, and their and his assigns, do and shall stand possessed of and interested in the said messuages, or tenements and leasehold premises,

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Limitations of chattels referred to that of freeholds.

Sums due on mortgage.

Reversionary interest in bank annuities.

Legacy, &c.

pressed, or contained of or concerning the same (1). AND it is hereby agreed and declared (2) by and between the said parties to these presents, and the said (*intended husband*) and (*intended wife*)

with the appurtenances, for all the residue and remainder which shall be then to come therein of the said term, IN TRUST for the said (*intended husband*) his executors, administrators, and assigns, for his and their sole and proper use and benefit."

And see *post*, Class VIII. No. I. and *Trafford v. Trafford*, 3 Atk. 347.

If, however, the estate be very small, and it be desirable to avoid the expense occasioned by setting out separate trusts of the chattel or personal property, the declaration at the beginning of this note (*ante*, p. 632, marg. *) may be inserted, adding,

"So nevertheless that no person who shall be entitled to an estate tail in such freehold hereditaments shall have or be construed to have an absolute or vested interest in the said leasehold premises, until he or she shall attain the age of twenty-one years, [or depart this life under *that age*, leaving lawful issue, him surviving,] until which said age of twenty-one years, [or his or her decease under *that age*, leaving lawful issue, him or her surviving,] it is hereby declared and agreed, that he or she shall be entitled to the rents, issues, and annual profits only of the said leasehold premises, and no further or greater estate, right, title, or interest in or to the same."

(1) If part of the property intended to be settled consist of a sum of money due upon mortgage, see *ante*, pp. 509. 526.

If the intended husband be entitled to a reversionary interest in bank annuities, it may be here assigned agreeably to the form given, *ante*, No. VI. p. 586, n. (1).

If part of the property consist of a legacy or residuary estate under a will, see *ibid.* p. 587, notes.

(2) These words amount to a covenant, *Ld. Mountford v. Ld. Cadogan*, 19 Ves. 638.

do hereby severally declare and direct and appoint that they the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, and other the trustees or trustee for the time being, to be appointed under or by virtue of these presents, shall stand and be seised of the freehold and copyhold messuages, lands, tenements, and hereditaments hereinbefore released and covenanted to be surrendered respectively, and also possessed of the leasehold messuages or tenements, pieces or parcels of ground and premises hereinbefore assigned, or mentioned or intended so to be, and also possessed of and interested in the said sum of £ , three per cent. consolidated bank annuities, so transferred into their names in the books of the Governor and Company of the Bank of England as aforesaid (1), UPON THE TRUSTS, and for the several ends, intents, and purposes hereinafter declared or expressed concerning the same respectively, that is to say, UPON TRUST for the said (*intended husband*) his heirs, executors, administrators, and assigns, according to the nature and

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Declaration of trusts to all the premises.

Husband until marriage.

(1) If part of the settled property consist of a reversionary interest in bank annuities, add,

Reversionary interest in bank annuities.

“ And also stand and be possessed of and interested in the said bank annuities and trust monies under the will of the said (*testator*) deceased, subject to the life-interest of the said therein, when and as the same shall be transferred to them as aforesaid, and in the meantime be entitled to the same, UPON THE TRUSTS, &c.” as above.

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Husband for life.

quality of the said estates and property, until the said intended marriage shall be duly had and solemnized; and from and immediately after the solemnization thereof, UPON TRUST (1), that they the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, and their and his assigns, do and shall stand and be possessed of and interested in all and singular the said messuages or tenements, lands, hereditaments, bank annuities, property, and premises respectively, IN TRUST to pay, apply, and dispose of the rents, issues, profits, interest, dividends, and annual proceeds thereof, and of every part thereof, unto the said (*intended husband*) (2) and his assigns, or

Portion secured by bond.

(1) If part of the lady's portion be secured by the bond of her father, see *ante*, No. VI. p. 588, n. (1).

Dividends to wife for life.

(2) If the money in the funds be the property of the wife, and it be agreed that the dividends shall be paid to her for life, independently of her husband, say,

“ And as to and concerning the said sum of £ , three per cent. consolidated bank annuities, IN TRUST to pay, apply, and dispose of the dividends, interest, and annual proceeds thereof, from time to time when and as the same shall be by them received or receivable, unto such person or persons, and for such intents and purposes as she the said (*intended wife*), notwithstanding her said intended coverture, shall from time to time by any note or writing, or notes or writings signed with her own hand, direct or appoint; and in default of such direction or appointment, as to the whole or any part of the said dividends, interest, and annual proceeds thereof, to pay the whole or so much

otherwise at his or their request, permit and suffer, and authorise and empower him and them to receive, retain, and take the same to and for his and their own use and benefit, for and during the term of his natural life (1); and from and immediately after the decease of the said (*intended husband*) IN TRUST to pay, apply, and dispose of the same unto the said (*intended wife*) in case she shall be then living, and her assigns, or otherwise at her or their request, permit and suffer, and authorise and empower her and them to receive, retain, and take the same to and for her and their own use and benefit, for and during the term of her

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Wife for life.

thereof concerning which no such direction or appointment shall be made, into the proper hands of her the said (*intended wife*) for and during the term of her natural life, for her sole and separate use and benefit, exclusively and independently of the said (*intended husband*) her intended husband, his creditors or assigns, who it is hereby declared and agreed shall not intermeddle with the same, or any part thereof, or have any control or interest in or over the same; and the receipts of the said (*intended wife*) or of such person or persons as she shall appoint to receive the said dividends, interest, and annual proceeds, or any part thereof, shall from time to time, notwithstanding her coverture, be good and effectual releases and discharges to the said (*trustees*) their executors, administrators, and assigns, for so much money as in such receipts respectively shall be expressed and acknowledged to be received, in like manner as if the said (*intended wife*) were sole and unmarried."

(1) If the intended husband be in trade or likely to become so, and the property be the wife's, see *ante*, No. III. p. 448, n. (1), No. V. p. 548, n. (1), p. 590, n. (1).

Bankruptcy of husband.

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Freeholds, Copyholds, Leaseholds, and Money in the Funds.

After decease of survivor and payment of rent of the leasehold premises.

Upon trust for such children as husband and wife shall appoint.

Life interest of wife diminished.

natural life (1); and from and immediately after the decease of the survivor of them the said (*intended husband*) and (*intended wife*), [UPON TRUST that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of such survivor, and their or his assigns, do and shall pay and apply so much of the rents and proceeds of the same premises as shall be requisite in or for payment of the rent or rents, reserved or made payable in or by the lease or leases whereby the leasehold messuages or tenements and premises hereinbefore assigned, or mentioned or intended so to be, are or shall be holden; and in or for keeping the messuages or buildings upon the said premises in good and tenantable repair, and performing other the covenants and agreements in the said leases, or any of them, which on the part of the tenant or lessee thereof is or are required to be performed; and also in or for insuring the same premises against loss or damage by fire in some respectable insurance office within the cities of London or Westminster; and do and shall apply the money which shall be received by him or them on account of such insurance, in repairing or rebuilding such part or parts of the said premises respectively as shall have been destroyed or damaged by fire]; And upon this FURTHER

(1) There may be here added a proviso for reducing the life-interest of the wife in favour of the children in the event of her second marriage, (if such be the intent of the parties): the form of such a proviso will be found, *ante*, No. VI. p. 591, n. (1).

TRUST, that they the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, and their and his assigns, do and shall stand and be seised, possessed of, and interested in all and singular the same freehold, copyhold, and leasehold messuages or tenements, lands and hereditaments, and bank annuities, property, and premises (1), UPON TRUST to convey, release, surrender, assign, and transfer the same respectively, and pay and apply the rents, dividends, interest, and income, which shall thenceforth grow due, unto or for the benefit of all and every or any one or more child or children, to the exclusion of any other or others of the children, if more than one, or any grandchild or grandchildren, or other issue then in being of the said intended marriage, for such estate or interest, and in such parts, shares, and proportions, if more than one, and manner and form, and subject to such charges and payments by any one or more, to any other or others of them, and to be conveyed or transferred and assigned, and to vest in respectively, and the rents, dividends, interest, and annual income thereof, to be payable and paid, at such age or ages, or days or times, and

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Freeholds, Copyholds, Leaseholds, and Money in the Funds.

(1) If part of the lady's portion be secured by the bond of her father, say,

Wife's portion secured by bond.

“AND also of and in the said sum of £ , and the stocks, funds, and securities so to be purchased therewith, or wherein the same shall, for the time being, be invested as aforesaid.”

See other limitations of copyholds, *post*, p. 658, rider (A).

Copyholds.

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Freeholds, Copyholds, Leaseholds, and Money in the Funds.

upon such contingencies, and with, under, and subject to such restrictions and conditions, and such powers, directions, and regulations for maintenance, education, advancement, or otherwise, as they (1) the said (*intended husband*) and (*intended wife*) his intended wife, at any time during their joint lives, in and by any deed or deeds, writing or writings, to be by them sealed and delivered in the presence of, and attested by two or more credible witnesses, either absolutely and irrevocably, or with any power or powers of revocation and new appointment, to or in favour of some one or more of the said children, grandchildren, or other issue, if any, and if not, then to or in favour of the person or persons who shall or may be entitled in default of appointment as hereinafter is mentioned, shall jointly direct, limit, or appoint; and in default of such joint direction, limitation, or appointment, and as to such part or

In default of joint appointment.

Husband shall appoint.

(1) If it be intended that the power of appointment should be exercised by the husband only, say,

“As he the said (*intended husband*), at any time or times, and from time to time during his life, by any deed or deeds, writing or writings, with or without power of revocation, to be by him signed, sealed, and delivered in the presence of, and attested by two or more credible witnesses, or by his last will and testament in writing, or any writing in the nature of or purporting to be his last will and testament, or any codicil or codicils thereto, to be by him signed and published in the presence of and attested by three or more credible witnesses, shall direct, limit, or appoint.”

parts of the said premises whereof no such direction, limitation, or appointment shall be made or given or take effect, and as and when any such which shall be made or given, shall respectively end and determine, then as the survivor (1) of them the said (*intended husband*) and (*intended wife*), his intended wife, after the death of the other of them, (and as to the said (*intended wife*) whether she shall be then sole or covert), by any deed or instrument in writing, with or without such power of revocation and new appointment as aforesaid, to be by him or her sealed and delivered in the presence of, and attested by two or more credible witnesses, or by his or her last will and testament in writing, or any codicil or codicils thereto, (or as to the said (*intended wife*) and she shall be then under coverture, by any writing or

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As the survivor shall appoint.

(1) If, in default of appointment by the husband, the power is to be given to the wife, say,

As wife shall appoint.

“As the said (*intended wife*), if she shall survive the said (*intended husband*) her intended husband, by any deed or deeds, writing or writings, with or without power of revocation, at any time or times, and from time to time to be by her signed, sealed, and delivered in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any writing purporting to be or being in the nature of her last will and testament, to be by her signed and published in the presence of and attested by three or more credible witnesses, shall, whether covert or sole, and notwithstanding any her future coverture, direct, limit, or appoint, or give, devise, or bequeath the same, or any part thereof.”

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In default of appointment for children.

In default of children, in trust for husband.

writings purporting to be, or being in the nature of, or intended as or for her last will and testament, or any codicil or codicils thereto) to be by him or her signed and published in the presence of and attested by three or more credible witnesses, shall direct, limit, or appoint; and in default of any such last mentioned direction, limitation, or appointment, of or by the survivor of them the said (*intended husband*) and (*intended wife*), and in the meantime and until the same shall be made and take effect, and as to such part of the said trust-estates, monies, and premises to which the same shall not extend, and when any such as shall be made shall end and determine, then UPON FURTHER TRUST, *for the children equally, benefit of survivorship, maintenance, education, and advancement* (1). AND UPON THIS FURTHER TRUST, in case there shall be no child of the said intended marriage, or no child who, being a son, shall attain the age of twenty-one years, or die under that age, leaving lawful issue living at his death, or born within due time thereafter, or who, being a daughter, shall attain that age or be married, then that they the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, and their and his assigns, do and

In default of appointment, the estates to be sold.

(1) *As ante*, p. 451, *et seq.*

If it be agreed that upon the decease of the surviving parent, and in default of appointment, the estates should be sold, and the produce divided amongst the children, see *ante*, No. III. p. 453, n. (1), and No. V. p. 553, n. (1).

shall (1) convey, release, surrender, assign, transfer, and pay the said freehold, copyhold, and lease-

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(1) Sometimes, on failure of issue of the marriage, the property is equally divided between the husband and wife; in which case say,

Freeholds, Copyholds, Leaseholds, and Money in the Funds.

“Do and shall convey, release, surrender, assign, transfer, and pay one undivided moiety, or half part, the whole into two equal moieties or half parts being considered as divided, of and in the said freehold, copyhold, and leasehold messuages or tenements, lands and hereditaments, bank annuities, trust-monies and premises, and the rents, issues, and profits, and dividends, interest, and proceeds thereof respectively, unto the said (*intended husband*), if then living, or if not, then unto his heirs, executors, administrators, and assigns, according to the nature and quality of the said estate and property; and as to the other undivided moiety or half part, the whole into like moieties or half parts being considered as divided as aforesaid, unto the said (*intended wife*) if living, and if not, then unto her heirs, executors, administrators, and assigns, according to the nature and quality of the said estate and property, to and for his, her, and their own respective and proper use and benefit.”

Equally between husband and wife.

Or if it be intended that the husband's estates should be limited to him, and the wife's to her, say,

Husband's estates to him, and wife's to her.

“Do and shall convey, release, surrender, and assign the said freehold, copyhold, and leasehold messuages or tenements, hereditaments and premises, (*or other the property of the husband*) and all accumulations of the rents, issues, and profits thereof, unto the said (*intended husband*) if then living, and if not, then unto his heirs, executors, administrators, and assigns, according to the nature and quality of the said estates, to and for his and their own use and benefit; and assign, transfer, and pay the said bank annuities and trust-monies, (*or other the wife's property*) and all accumulations and savings, if any, of the dividends, interest, and annual proceeds thereof, unto the said (*intended*

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Freeholds, Copyholds, Leaseholds, and Money in the Funds.

Power of leasing.

Covenant by intended husband, that he is seised in fee of the freeholds.

hold messuages, lands, tenements, hereditaments, and premises, and the said bank annuities and trust-monies, and all accumulations and savings, if any, of the rents, dividends, interest, and income thereof, unto the said (*intended husband*) his heirs, executors, administrators, and assigns, according to the nature and quality of the said estates and property, for his and their own proper use and benefit. PROVIDED ALWAYS, that, &c. (*Power of leasing, selling, exchanging, &c.*) (1). AND the said (*intended husband*) for himself, his heirs, executors, and administrators, doth hereby covenant, declare, grant, and agree with and to

wife), if then living, and if not, then unto the next of kin of her the said (*intended wife*), under and according to the statute made for the distribution of the estates and effects of persons dying intestate and unmarried, and in all respects as if she the said (*intended wife*) had departed this life possessed of the said premises, as of her own proper estate and effects, without being or having been married."

Wife's estate to such persons as she shall appoint.

Or the trust may be for such persons as she shall by deed appoint; and in default of appointment, then to her next of kin; in which case see the form given, *ante*, No. IV. p. 514; No. V. p. 560, n. (1).

Power of leasing, &c.

Future acquired property to be settled upon the same trusts.

(1) See *ante*, p. 459, *et seq.*

If it have been agreed that any future acquired property of the husband shall be settled to the uses of the settlement, (and that such a covenant will be good, see *Lewis v. Madocks*, 17 Ves. jun. 48), insert here a covenant for that purpose; the form of which will be found, *ante*, No. III. p. 453, n. (1), or No. IV. p. 519. 577, rider (A).

Trustees to lend husband a sum of money.

There may here be inserted a power for the trustees to lend the husband a part of the trust-money, upon his executing a bond for the repayment of it; the form of such a power will be found, *ante*, No. V. p. 562, n. (2).

the said (*trustees*) their heirs, executors, administrators, and assigns, in the manner following, (that is to say) that for and notwithstanding any act, deed, matter, or thing whatsoever, made, done, executed, occasioned, suffered, or omitted by him the said (*intended husband*) or any of his ancestors (1), to the contrary, he the said (*intended husband*) at the time of the sealing and delivery of these presents (2), is lawfully, rightfully, and absolutely seised in his demesne as of fee, in his own right, and to his own use, of, (3) in, and to all and singular the freehold messuages, lands, tenements, hereditaments, and premises hereinbefore granted, released, and confirmed, or mentioned or intended so to be, as of, in, and for a good, perfect, clear, absolute, and indefeasible estate of inheritance in fee simple, in possession (4) and in

SETTLEMENTS.

MARRIAGE.

Freeholds, Copyholds, Leaseholds, and Money in the Funds.

(1) If the intended husband took otherwise than by descent, see *ante*, p. 378, n. (1).

(2) If the intended husband took the estate to himself and a trustee to prevent dower, say,

Husband and his trustee.

“HE the said (*intended husband*) at the time of the sealing and delivery of these presents, is the lawful, rightful, and sole beneficial owner and proprietor of all and singular the freehold messuages,” &c. *as above*.

(3) If the settlement be of a moiety or other portion only of the estate, say,

“OF and in the said undivided moiety or half part, (*or as the case may be*) of and in all and singular the freehold messuages,” &c. *as above*.

(4) If the settlement be of a remainder or reversion, instead of “in possession,” say,

Remainder, &c.

“In remainder or reversion expectant as aforesaid.”

SETTLEMENTS.

MARRIAGE.

Freeholds, Copyholds, Leaseholds, and Money in the Funds.

And according to the custom of the copyholds.

And possessed of the leaseholds.

severalty; and now also is in like manner seised or otherwise' legally and equitably or rightfully entitled unto the said copyhold or customary messuages, lands, tenements, and hereditaments hereby covenanted or agreed to be surrendered as aforesaid, with the appurtenances, of a good, sure, perfect, and indefeasible estate of inheritance to him and his heirs, at the will of the lord, according to the custom of the manor of , or other manor or manors whereof the same respectively are holden; and is also well and rightfully possessed of and entitled to all and singular the leasehold premises hereby assigned, or mentioned or intended so to be as aforesaid, with the appurtenances, for the residue of the said term of years now to come and unexpired by lapse of time, without any manner of trust, condition, power of revocation, or of limiting any new or other use or uses, or any other qualification, restriction, matter, or thing whatsoever, expressed or implied, which can or may revoke, determine, abridge, qualify, alter, charge, incumber, or prejudicially affect the same in any manner howsoever (1). AND ALSO, that for and notwithstanding

Husband and trustee.

(1) If the intended husband took the estate to himself and a trustee to prevent dower, add,

“And that he the said (*intended husband*) hath not at any time heretofore in any manner executed, or otherwise exercised, the power of appointment, direction, or limitation so reserved or given to him as aforesaid, of or concerning the premises, or any part thereof, or any estate or interest therein.”

ing any such act (1), deed, matter, or thing as
aforesaid, he the said (*intended husband*) (2) now
hath in himself full power, and lawful and absolute
right and title to grant, bargain, sell, release, and
confirm all and singular (3) the said freehold here-
ditaments and premises hereby released, or other-
wise assured or intended so to be, and to surrender
the said copyhold or customary hereditaments and
premises hereby covenanted to be surrendered,
and every part and parcel of the same respectively,
with the appurtenances, unto the said (*trustees*)
their heirs and assigns; and to grant, bargain, sell,

SETTLE-
MENTS.

MARRIAGE.

Freeholds, Copy-
holds, Lease-
holds, and
Money in the
Funds.And hath right
to convey.

(1) If brevity be particularly desired, say,

Brevity.

“ And hath good and sufficient right, title, and authority
to grant, release, surrender, and assign the same freehold,
copyhold, and leasehold premises respectively, with the ap-
purtenances, unto the said (*trustees*) their heirs, executors,
administrators, and assigns, to the uses, upon the trusts,”
&c. *as above*.

(2) If the intended husband took the estate to himself and a
trustee to prevent dower, say,

Husband and
trustee.

“ They the said (*intended husband*) and (*trustee to pre-
vent dower*) now have in themselves, or one of them hath in
himself, full power,” &c. *as above*.

(3) If the settlement be of a moiety or other portion only of
the estate, say,

“ All and singular the said undivided moiety or half part,
as the case may be, of and in all,” &c. *as above*.

If of a remainder or reversion, say,

Remainder, &c.

“ All and singular the said remainder or reversion ex-
pectant as aforesaid, of and in all,” &c.

SETTLE-
MENTS.

MARRIAGE.

*Freeholds, Copy-
holds, Lease-
holds, and
Money in the
Funds.*

That the pre-
mises shall
remain upon
trusts afore-
said.

assign, and transfer all and singular (1) the leasehold messuages or tenements and premises hereby assigned, or mentioned or intended so to be, and every part and parcel thereof, with their respective appurtenances, unto the said (*trustees*) their executors, administrators, and assigns, for all the residue now to come and unexpired by efflux of time of and in the said term of years, upon the trusts, and for the ends, intents, and purposes, and with, under, and subject to the powers, provisos, limitations, declarations, and agreements hereinbefore limited, expressed, declared, and contained concerning the same. AND FURTHER (2), that all and singular the said several freehold, copyhold, and leasehold messuages, lands, tene-

Moiety, &c. of
leaseholds.

(1) If the assignment be of a moiety or other portion only of the leasehold premises, say,

“All and singular the said undivided moiety or half part, of and in all and every the said leasehold messuages,” &c. *as above.*

Tenant in tail.

(2) If the intended husband be tenant in tail of the freehold lands agreed to be settled, say,

“AND FURTHER, that all and singular the said freehold messuages, lands, tenements, and hereditaments hereinbefore released, or mentioned or intended so to be, shall immediately upon the sealing and delivery of these presents, and at all times thenceforth, after the said common recovery or common recoveries aforesaid, or other sufficient assurances shall be suffered, had, and perfected, and all and singular the copyhold and leasehold messuages, tenements, lands, and hereditaments hereinbefore covenanted to be surrendered and assigned respectively,” &c. *as above.*

ments, hereditaments, monies, bank annuities, and premises hereinbefore released, covenanted to be surrendered, transferred, and assigned respectively, or otherwise assured, or mentioned, or intended so to be, shall and will from time to time, and at all times during the estates in respect of which the same respectively are hereby granted, released, covenanted to be surrendered or assigned, remain, continue, and be respectively to the uses, upon the trusts, and for the ends, intents, and purposes, and with, under, and subject to the powers, provisos, limitations, declarations, and agreements hereinbefore limited, expressed, declared, and contained of and concerning the same respectively, and shall and may be peaceably and quietly had, holden, used, occupied, possessed, and enjoyed accordingly, without any manner of hinderance, interruption, disturbance, claim, or demand whatsoever, by or from the said (*intended husband*) his heirs, executors, or administrators, or any person or persons now or hereafter having or rightfully claiming any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or concerning the said hereditaments and premises, or any part thereof, from, through, under, or in trust for him, them, or any of them, or any of the ancestors of the said (*intended husband*) (1), (other than through, under, or by virtue of any

SETTLEMENTS.

MARRIAGE.

Freeholds, Copyholds, Leaseholds, and Money in the Funds.

(1) If the intended husband took otherwise than by descent, see *ante*, p. 378, n. (1).

SETTLEMENTS.

MARRIAGE.

Freeholds, Copyholds, Leaseholds, and Money in the Funds.

Free from incumbrances.

Covenant for further assurance.

leases, or agreements for leases, of which counterparts have been produced unto the said (*trustees*) their counsel or solicitor, at or before the sealing and delivery of these presents). AND that free and clear, and clearly and absolutely discharged and exonerated, or otherwise by and at the expense of the said (*intended husband*) his heirs, executors, or administrators, effectually protected and indemnified of, from, and against all former and other grants, bargains and sales, releases, conveyances, assurances, estates, rights, titles, interests, charges and incumbrances whatsoever, made, created, executed, committed, occasioned, or suffered by him the said (*intended husband*) or his ancestors, or other persons claiming under or in trust for him or them, (such leases and agreements, and the land, sewers, and property tax, and the customary fines, heriots, rents, and services respectively aforesaid, and the rents, covenants, conditions, and agreements, in and by the said indenture of lease reserved and contained) only excepted. AND MOREOVER, that he the said (*intended husband*) his heirs, executors, and administrators, and all persons claiming or possessing any estate, right, title, charge, or interest, at law or in equity, in, to, out of, upon, or respecting the said several freehold, copyhold, and leasehold messuages, lands, tenements, hereditaments, and premises hereby granted and released, or covenanted to be surrendered and assigned respectively, or otherwise assured, or mentioned or intended so to be, or any part thereof, from, through,

under, or in trust for him, them, or any of them, or any of the ancestors of the said (*intended husband*) (1) (other than persons claiming or entitled under or by virtue of such leases, or agreements for leases, as aforesaid, so far as respects their respective estates or interests, under or by virtue of the same) shall and will from time to time, and at all times after the solemnization of the said intended marriage, at the request of any person or persons entitled, or to be entitled to any estate or interest under any of the limitations, uses, or trusts hereinbefore contained, at the costs and charges of the person or persons respectively by whom such request shall be made, or of the said trust estate, make, do, execute, and perfect all and every such further and other lawful and reasonable acts, deeds, conveyances, matters, and things whatsoever, for the further, better, more perfectly, fully, absolutely, and satisfactorily granting, releasing, surrendering, and assuring the same freehold and copyhold hereditaments and premises respectively, with their and every of their respective rights, privileges, members, appendages, and appurtenances, unto and to and for the use of the said (*trustees*) their heirs and assigns, and for the further, better, and more effectually or satisfactorily assigning and assuring the said leasehold messuages, or tenements and

SETTLEMENTS.

MARRIAGE.

Freeholds, Copyholds, Leaseholds, and Money in the Funds.

(1) If the intended husband took otherwise than by descent, see *ante*, p. 378, n. (1).

**SETTLE-
MENTS.**

MARRIAGE.

*Freeholds, Copy-
holds, Lease-
holds, and
Money in the
Funds.*

premises, with their appurtenances, for and during all the residue and remainder of the said term of years, which shall thenceforth, and from time to time, be to come and unexpired therein by efflux of time, unto the said (*trustees*) their executors, administrators, and assigns, upon the trusts, and for the ends, intents, and purposes, and with, under, and subject to the powers, provisos, limitations, declarations, and agreements hereinbefore limited, expressed, declared, and contained of and concerning the same, and according to the true intent and meaning of these presents, as by the person or persons respectively making such request, or his or their counsel in the law (being of the degree of a barrister), shall be advised and required; so that such further assurance or assurances, or any of them, do not contain nor imply any further or other warranty or covenant than against or on the part of the person or persons who shall be required to make or execute the same, his, her, or their devisors, ancestors, heirs, executors, and administrators, and his, her, or their own respective acts, deeds, omissions, or defaults; and so that the person or persons who shall be required to make or execute any such assurance or assurances be not obliged to go from his, her, or their then place or respective places of abode, for the making or executing the same, without a reasonable and sufficient sum being previously paid, tendered, or secured to him, her, or them, for or in respect of his, her, or their time, trouble, and expense.

AND also, that he the said (*intended husband*) shall and will, from time to time, and at all times during such period of the said term of years as he shall happen to live, pay or cause to be paid all and every the rents reserved or made payable in or by the said in part recited indenture of lease for or in respect thereof, or by any future lease to be obtained of the same premises, and also all taxes and other outgoings from time to time due and payable for or in respect of the same premises, as and when the same respectively shall become due and payable; and also well and truly observe and perform, or cause to be observed and performed, the several covenants and agreements in the said indenture of lease contained, which on the tenant or lessee's part is or are thereby required to be performed (1), and well and effec-

SETTLEMENTS.

MARRIAGE.

Freeholds, Copyholds, Leaseholds, and Money in the Funds.

Covenant by husband to pay the rent reserved by the original lease.

And perform covenants.

(1) If the premises be holden on lease determinable on lives, say,

Lease for years determinable on lives.

“ And also shall and will from time to time during his life, when and as often as any or either of the persons for whose life or lives the said premises are holden shall happen to depart this life, use his best endeavour to procure a new lease of the same premises, to be made and executed to the said (*trustees*) or the survivor of them, or their or his assigns, for and during a further term of years determinable on the life or lives of some other fit person or persons, and such of the lives in the then subsisting lease named, as shall be then in being, and the life of the longest liver of them, at or under the same or like rents, covenants, and agreements, as in and by the present or the then subsisting lease are reserved and contained, and so from time to

SETTLEMENTS.

MARRIAGE.

Freeholds, Copyholds, Leaseholds, and Money in the Funds.

That in case of sale, the intended husband will join.

tually save harmless and keep indemnified them the said (*trustees*) their executors, administrators, or assigns, of and from the same. AND (1) further, &c. (*Covenant by husband to insure the premises against fire* (2)). AND FURTHER, that in case the said messuages, lands, tenements, hereditaments, and premises hereby severally granted, released, covenanted to be surrendered and assigned respectively, or any of them, or any part or parts thereof, shall be sold in pursuance of the trusts hereinbefore declared for that purpose, he the said (*intended husband*) his heirs, executors, and administrators, shall and will, if required, join in such sale, and execute the several conveyances of the premises to be sold, unto and to the use of the purchaser or purchasers thereof, his, her, or their heirs, executors, administrators, and assigns, or as he, she, or they shall direct or appoint, and enter into all proper and reasonable covenants with the purchaser or purchasers, his, her, or their heirs, executors, administrators, or

time as often as any of the lives in the present or any such new or future lease shall happen to die, and shall and will, when any such new lease as aforesaid shall be made and executed, pay or cause to be paid the fine for making and granting such new lease of the same leasehold premises, and other the fees, costs, and charges incident thereto."

Brevity.

(1) If these covenants to repair and insure are in the original lease, they may be omitted here, as being comprised in the preceding covenants by the husband to perform the covenants contained in such lease.

(2) See *ante*, p. 421, rider (F).

assigns, for the title, possession, and further assurance of the premises so to be sold; nevertheless it is hereby agreed and declared, that the joining of the said (*intended husband*) or his heirs, executors, or administrators in any such sale, conveyance, or assurance, shall not in any wise be or be deemed essential or necessary to perfect the title of the purchaser or purchasers thereof, or of any part thereof, the same being intended only for the further satisfaction of such purchaser or purchasers, if required. PROVIDED ALSO, &c. (*Power of appointing new trustees, and usual clauses of indemnity* (1)). IN WITNESS, &c.

SETTLEMENTS.

MARRIAGE.

Freeholds, Copyholds, Leaseholds, and Money in the Funds.

Power of appointing new trustees.

(1) See *ante*, p. 481, *et seq.*

New trustees.

. See various other provisos, &c. &c. *ante*, p. 401, *et seq.*; 489, *et seq.*; 525, *et seq.*; 576, and *post*, p. 658, *et seq.* Other provisos, &c.

SETTLEMENTS.

MARRIAGE.

Freeholds, Copyholds, Leaseholds, and Money in the Funds.

Husband covenants to surrender his copyholds.

(A) Variation in Limitation of Copyholds, see ante, p. 641, note.

“AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the said intended marriage, and of other the considerations aforesaid, and in pursuance of the said recited agreement relating to the said copyhold estate of the said (*intended husband*), he the said (*intended husband*), for himself, his heirs, executors, and administrators, doth hereby promise and agree with the said (*trustees to preserve*) and their heirs, that in case the said intended marriage shall take effect, he the said (*intended husband*) or his heirs, shall and will, at his or their own costs and charges, as soon as conveniently may be after the solemnization of the said intended marriage, surrender and assure into the hands of the lord of the manor next hereinafter mentioned, according to the custom of the same manor, ALL AND SINGULAR the copyhold or customary messuages, lands, tenements, and hereditaments of him the said (*intended husband*), situated within or holden of the said manor of , to the several uses, trusts, intents, and purposes, and under and subject to the several powers, provisos, declarations, and agreements, hereinafter limited, expressed, and declared, or referred to of and concerning the same (that is to say) To THE USE of him the said (*intended husband*) and his assigns, during his natural life; and from and after his decease then to the use of the said (*intended wife*) and her assigns for her life. AND from and after the decease, THEN TO THE USE of the said (*trustees*) their heirs and assigns for ever, UPON TRUST, that in case there shall be issue of the body of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, an only son, and one or more daughter or daughters, or two sons, and one or more other child or children, then that they the said (*trustees*) or their heirs or assigns, do and shall, by sale or mortgage of the said copyhold premises hereby covenanted to be surrendered as aforesaid, or any part thereof, or by and out of the rents and

To the use of the husband for life.

The wife for life.

To trustees in fee, in trust, to aid freeholds in raising a sum for portions.

profits thereof, raise and levy, or borrow and take up at interest so much and such part or parts of the sum of £
 hereinbefore provided, under the trusts of the said term of
 years, for or towards the portion or portions of the said
 child or children (other than and except an eldest or only
 son, and a second son) and the interest and maintenance in
 respect thereof, as the freehold premises comprised in the
 said term of years shall be deficient in raising, or shall
 not be raised under the trusts of the same term, which part
 or parts of the said sum of £ so to be raised by and out
 of the said copyhold hereditaments hereby covenanted to be
 surrendered as aforesaid, for making up the portion or por-
 tions of such child or children (not being an eldest or only
 son, or a second son) shall be subject to such and the same
 direction and appointment by the said (*intended husband*)
 and (*intended wife*), and the survivor of them; and in de-
 fault of such direction and appointment shall be paid to and
 vest in the same child or children, at such and the same
 time or times, with such and the same sum of money for
 maintenance and education, and with such and the same
 benefit of survivorship and accruer, and with such power of
 advancement, and under and subject to such and the same
 powers, provisos, declarations, and agreements, as are here-
 inbefore mentioned, limited, expressed, and declared, of and
 concerning the said sum of £ , hereinbefore provided
 for or towards the portion or portions of the same child or
 children respectively, under and by virtue of the trusts of
 the said term of years as aforesaid, and after the raising
 and payment of the said sum or sums of money herein-
 before provided to be raised out of the said copyhold mes-
 suages, lands, tenements, and hereditaments hereby co-
 venanted to be surrendered as aforesaid, UPON TRUST, that
 they the said (*trustees*) their heirs and assigns, do and shall
 settle, surrender, and assure the same copyhold or custom-
 ary messuages, lands, tenements, and hereditaments, or so
 much thereof as shall not be sold or disposed of for the
 purposes aforesaid, To THE USE of the first and other sons
 of the body of the said (*intended husband*) on the body of
 the said (*intended wife*) to be begotten, and the heirs of the

SETTLE-
MENTS.

MARRIAGE.

Freeholds, Copy-
holds, lease-
holds, and
Money in the
Funds.And subject
thereto,to surrender
the premisesto the use of
the first and
other sons in
tail general, &c.

SETTLE-
MENTS.

MARRIAGE.

*Freeholds, Copy-
holds, Lease-
holds, and
Money in the
Funds.*

body of such first son issuing; and for default of such issue, to and for such and the same uses, ends, intents, and purposes, and under and subject to such and the same powers, provisos, limitations, and appointments, as are hereinbefore limited, expressed, and declared, of and concerning the aforesaid freehold messuage or tenement, lands, and hereditaments in , in the said county of , with their appurtenances, subsequent to the aforesaid limitation thereof, to the use of the first son of the said intended marriage, and the heirs of his body: AND UPON THIS FURTHER TRUST, that they the said (*trustees*) their heirs or assigns, do and shall in the meantime, from and after the death of the survivor of them the said (*intended husband*) and (*intended wife*), and until such surrender or settlement shall be made by them the said (*trustees*) their heirs or assigns as aforesaid, permit and suffer the surplus of the rents and profits of the said copyhold or customary messuages, lands, tenements, and hereditaments hereinbefore covenanted to be surrendered, which shall from time to time remain after payment of what shall become due for maintenance under the trusts hereinbefore declared respecting the same copyhold premises, and for the interest of any monies to be raised by mortgage thereof as aforesaid, to be received and taken by such person or persons as would be in, or be entitled to the possession of the same copyhold or customary messuages, lands, tenements, and hereditaments, or some part or parts thereof, in case the same were surrendered and assured by the said (*trustees*) their heirs or assigns, in manner hereinbefore directed."

*Uses where the Premises are settled by the Husband's or
Wife's Father.*

Father for life,
&c.

" TO THE USE of him the said (*father*) and his assigns, for and during the joint lives of himself and of the said (*intended husband*) and (*intended wife*), and of the survivor of them the said (*intended husband*) and (*intended wife*), but

nevertheless in trust for the said (*intended husband*) and his assigns, during the joint lives of himself and the said (*father*), and from and after the death of the said (*intended husband*), in case the same shall happen during the joint lives of the said (*father*) and (*intended wife*), THEN IN TRUST for the said (*intended wife*) and her assigns during the joint lives of herself and of the said (*father*), and from and after the death of the said (*father*), THEN TO THE USE of the said (*intended husband*) and his assigns during his natural life, and from and after his decease, THEN TO THE USE of the said (*intended wife*) and her assigns for her life, and from and after the decease of the survivor of them the said (*intended husband*) and (*intended wife*), THEN TO THE USE of the said (*trustees*) their heirs and assigns for ever, UPON TRUST, that in case there shall be issue of the body of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten," &c. (*as before*).

SETTLEMENTS.

MARRIAGE.

Freeholds, Copyholds, Leaseholds, and Money in the Funds.

A Proviso, in case a younger Son shall become entitled to other Premises.

"PROVIDED ALSO, and it is hereby declared and agreed by and between the said parties to these presents, that in case the second, third, fourth, or any other son or sons, (save and except the youngest son) of the body of the said (*intended husband*) on the body of the said (*intended wife*) to be begotten, or the heir or heirs of the body or bodies of such second, third, fourth, or other son or sons, (except the youngest son), shall by the death and failure of issue of the first or any other son or sons of the body of the said (*intended husband*), on the body of the said (*intended wife*) to be begotten, be or become entitled to be in the actual possession, or in the receipt of the rents and profits of the said messuages or tenements, lands, and hereditaments in aforesaid, or any part thereof, in virtue of the limitations or trusts thereof hereinbefore contained, then, and in every such case, the use or trust, and estate of and in the afore-

Shifting use on younger son becoming entitled to other estates.

SETTLE-
MENTS.

MARRIAGE.

Freeholds, Copy-
holds, Lease-
holds, and
Money in the
Funds.

said messuages, farms, lands, tenements, and hereditaments in hereinbefore limited to, or intended for the benefit of such son or sons, (save and except the youngest son), or the heir or heirs of his or their body or bodies, who shall or may so respectively happen to become entitled to the said messuages or tenements, lands, and hereditaments in , or any part thereof, shall from thenceforth cease, determine, and become void to all intents and purposes, as if such son or sons, or his or their issue respectively becoming entitled as aforesaid, was or were respectively dead without issue, and then and in such case, and so often as the same shall happen, the said messuages, farms, lands, tenements, and hereditaments in aforesaid, or so much thereof as shall not be disposed of under the trusts aforesaid, shall go over and remain unto and for the benefit of the person and persons who, by virtue of these presents, and according to the true intent and meaning thereof, would be next entitled to take and enjoy the said hereditaments last mentioned, in case such son or sons of the said (*intended husband*) and (*intended wife*), or his or their respective issue, so as aforesaid, becoming entitled to the said messuages or tenements, lands, and hereditaments in , or any part or parts thereof, was or were dead without issue."

Covenant by Husband to leave Wife a Sum of Money if she survive him.

Covenant to
leave wife a
provision, good.

A covenant by the husband to leave his wife a sum of money, if she survive him, is good, and makes her a creditor under 13 Eliz. c. 5; see *Rider v. Kidder*, 10 Ves. jun. 360. If, therefore, it be agreed, that instead of the rents and profits of the settled estates, she shall be paid a sum of money equivalent to her portion, if she survive her husband, see *ante*, No. IV. p. 531, note; No. V. p. 574, n. (1).

Husband in
copartnership.

If the father of the intended wife be in trade, and he have agreed to take the husband into copartnership, see *ante*, p. 676, note.

No. VIII.

*Deed of Settlement on Separation between Husband and Wife, where a Provision is made for the Wife's Support out of Freehold Property (1).**Variations where the Provision is secured out of Copyholds.**Where out of Leaseholds.**Where out of Money in the Funds.**Where by Bond and Covenant only.**Also where the Separation is in pursuance of an Agreement contained in a Marriage Settlement.*

THIS INDENTURE of parts, made the
 day of [* in the year of the
 reign, &c. and] in the year of our Lord .

(1) A deed of separation, where it contains a provision for the wife or her children, is, as far as regards those objects, precisely in the nature of a settlement after marriage, and is capable of sustaining similar uses, trusts, and limitations: the student is, therefore, referred to the preceding deeds of settlement for various agreements and provisions which are introducible into a deed of separation; see *ante*, No. II. p. 281, *et seq.* in the margins, also p. 285, n. (2), likewise Ath. on Settlements, c. 26.

Deed of separation a settlement after marriage.

* Where brevity is particularly desired, those parts of the precedent within brackets may be omitted. Brevity.

SETTLEMENTS.	BETWEEN (<i>the husband</i>) of, &c.	of the first
Separation.	part, (<i>the wife</i>) of, &c.	, wife of the said
Parties.	(<i>husband</i>) of the second part, and (<i>the trustee</i>) (1)	of, &c.
	, a trustee (2) named and appointed	on the part of the said (<i>wife</i>) for the purposes
	hereinafter mentioned, of the third part. WHERE-	AS (3) various unhappy differences having long

Wife not bound
by separation
deed.

(1) As a wife is not bound by an agreement or deed of separation, Lord H. John v. Lady H. John, 11 Ves. 533, and as the husband cannot covenant with his wife, by reason of their legal unity, it is necessary to have a trustee party to the deed, as well to guarantee the performance on the part of the wife of her agreement with her husband, as to give the wife a remedy by means of her trustee for any breach of performance of the stipulations entered into by the husband for the benefit of the wife. Another reason for the intervention of a trustee is to make the terms binding on the husband, by reason of the consideration or benefit he receives from the covenant of the trustee to indemnify him against the debts of his wife, Stevens v. Oliver, 2 Brow. Ch. Ca. 90, King v. Brewer, *ib.* note, which he is by law bound to pay; and, with such indemnity, it will be good, and specifically decreed in equity even against creditors; see Legard v. Johnson, 3 Ves. 361, and *post*, p. 687, n. (1); but see also the doubts of Lord Hardwicke as to this in Fitzer v. Fitzer, 2 Atk. 514.

Number of
trustees.

(2) If the provision made for the wife be an annuity to be secured by the transfer of stock, or assignment of personal property, two trustees should be named in whom the property is to be vested; and see *ante*, No. VI. p. 581, n. (1).

Separation
made in pur-
suance of a
marriage agree-
ment.

(3) If the event of a separation be provided for in the settlement made on the parties' marriage, such settlement may be here recited as follows:

“AND WHEREAS by an indenture of settlement bearing date the day of , which was in the year , and made or expressed to be made between, &c. and purporting to be a settlement made on a marriage then intended between the said (*husband*) and the said

subsisted between the said (*husband*) and (*wife*) his wife, they have mutually agreed to separate

SETTLE-
MENTS.

Separation.

(*wife*) his now wife, the messuages, lands, tenements, and hereditaments therein and hereinafter particularly described, were conveyed and assured (in the event of the said marriage taking place) unto the use of the said (*trustees*) for the term of ninety-nine years; UPON TRUST that in case a separation should take place between the said (*husband*) and (*wife*) during their joint lives, A. B. and C. D. (trustees therein named) and the survivor of them, and the executors and administrators of such survivor, and their and his assigns, should, out of the rents, issues, and profits of the said hereditaments, during so long as they the said (*husband*) and (*wife*) his said wife, should live separately and apart from each other, raise and levy a clear yearly sum of £ of lawful and current money of England, in addition to an annuity or yearly sum of £ thereinbefore secured to her, and pay the same unto such person or persons as she the said (*wife*) should from time to time, notwithstanding her coverture, by any writing under her hand, direct or appoint; and in default of and until such direction or appointment should be made, should pay the same annuity or yearly sum of £ , or so much thereof of which no such direction or appointment should be made, into the proper hands of her the said (*wife*) for her own sole and separate use and benefit, and so and in such manner, and to the intent that the same might not be subject or liable to the control, order, direction, debts, engagements, or incumbrances of the said (*husband*) her then intended husband, but might be absolutely at her own separate and independent disposal, as if she were sole and unmarried; and the receipt or receipts of her the said (*wife*) under her hand, or the hand or hands of her appointee or appointees, it was thereby declared and agreed, should, notwithstanding her coverture, be a sufficient discharge for so much thereof as in such receipt or receipts should be acknowledged to be

SETTLE-
MENTS.Separation.

and live apart from each other during the remainder of their lives, upon the terms and conditions, and under and subject to the covenants, provisos, stipulations, and agreements hereinafter contained. AND WHEREAS the said (*husband*) hath agreed to allow his said wife an annuity of £ per annum, during her natural life, for her maintenance and support, and to secure the payment thereof by the bond or obligation of him the said (*husband*) [or to make the same chargeable (1) upon certain freehold {or leasehold estates} hereinafter

received; but it was nevertheless thereby provided and further declared, that the said annuity or yearly sum of £ should cease, on the happening of any such event or events as are therein and hereinafter mentioned respecting the same. AND WHEREAS (*if the case be so*) E. F. and G. H. of, &c. have since the date of the said indenture of settlement been appointed trustees of the said term of ninety-nine years, in the room of the said A. B. and C. D. in pursuance of a power therein contained for that purpose."

Money in the
funds.

(1) If the annuity be secured upon the dividends of money in the funds, say,

"AND to secure the same by such assignment of the dividends and interest of the sum of £ , three per cent. consolidated bank annuities, as hereinafter is expressed."

Money trans-
ferred to trus-
tees.

If the annuity be intended to be secured by the transfer of stock to trustees, say,

"AND to secure the same by the transfer of £ , three per cent. consolidated bank annuities to the said (*trustees*) upon the trusts hereinafter expressed. AND WHEREAS the said (*husband*) hath this day transferred the

described (*if so agreed*), in the manner hereinafter expressed.] AND WHEREAS the said (*husband*) hath accordingly by his bond (1) or obligation in writing bearing even date with these presents, become bounden unto the said (*trustee*) his executors, administrators, and assigns, in the penal sum of £ , with a condition thereunder written for making void the same on payment of the said annuity, on the days, at the times, and in the manner therein and hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement relative to and in respect of the said separation so agreed upon between the said (*husband*) and (*wife*) as aforesaid, he the said (*husband*) for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, with and to the said (*trustee*) his executors and administrators, in the manner following (that is to say) that she the said (*wife*) the wife of him the said (*husband*) shall or lawfully may from henceforth, and at all times hereafter during the joint natural lives of them the said (*husband*) and (*wife*) live separately and apart from him the said (*husband*) and go, reside, continue, and be at such place or places, and with such family and fa-

SETTLEMENTS.

Separation.

Recital of bond.

WITNESS,
Covenant by
husband to permit wife to live
apart from him,

said sum of £ , three per cent. consolidated bank annuities, into the joint names of them the said (*trustees*) in the books of the governor and company of the Bank of England."

(1) See the form of this bond, INDEX, voce BOND.

SETTLE-
MENTS.

Separation.

and will not
molest her,nor claim her
jewels or other
property.

milies, relations, friends, and others (save only and except any person or persons in illicit intercourse) and follow or carry on such trade, business, or employment as she the said (*wife*), notwithstanding her coverture, shall at any time or times, and from time to time, think fit, and that wholly freed and discharged of and from all power, authority, government, and personal restraint whatsoever of or by him the said (*husband*) in like manner, in all respects, as if she were sole and unmarried. AND that he the said (*husband*) shall not nor will, at any time or times hereafter, sue, molest, or disturb, or cause to be sued, molested, or disturbed, her the said (*wife*) his wife, either in the ecclesiastical or any other court, or by other process of law, or by threats or other means of intimidation, or other ways or means whatsoever, by reason or on account of her so living apart from him as aforesaid, or molest or prohibit any other person or persons whatsoever, to or for receiving, harbouring, or entertaining her in or during such her separation as aforesaid. AND FURTHER, that he the said (*husband*) his executors, administrators, or assigns, shall not nor will at any time or times hereafter, claim or demand any of the jewels, plate, clothes, linen, wearing apparel, paraphernalia, trinkets, or other goods, or effects whatsoever (save as hereinafter is expressed,) which she the said (*wife*) now hath or useth, or at any time or times hereafter, during such separation, shall or may purchase, or by any other means acquire or become possessed of, or be in anywise

entitled to or interested in, but that she the said (*wife*) and her assigns shall and may, from time to time, and at all times, peaceably and quietly have, hold, retain, use, and enjoy the same respectively, to and for her and their own sole and proper use and benefit, in like manner as if she were sole and unmarried; and also shall and may, and she is hereby authorised and empowered, from time to time, and at all times, freely and absolutely to dispose of the same goods, property, or effects, or any of them, or any part thereof, at her free will and pleasure, either in her lifetime or by her last will and testament, or any writing in the nature of or purporting to be her last will and testament, or any codicil or codicils thereto, with or without any executor or executrix thereof, to or for the benefit of any person or persons whomsoever, without the control or interference of him the said (*husband*) his executors, administrators, or assigns, or any person or persons claiming from, through, by, under, or in trust for him, them, or any of them; and that he the said (*husband*) his executors and administrators, shall and will permit and suffer the will and testament, or writing in the nature of or purporting to be such, of her the said (*wife*), or any codicil or codicils thereto, to be proved in the proper ecclesiastical court by the executors or executrixes therein named, or otherwise as the case may require, and aid and assist in the probate thereof, if necessary or proper; and shall and will, after probate thereof, do and cause to be done every or any act, deed, or

SETTLE-
MENTS.

Separation.

Wife may dis-
pose of same.

SETTLEMENTS.

Separation.

Not to extend
to future ac-
quisition of real
property.

FURTHER
WITNESS,
Covenant by
husband to pay
annuity.

thing whatsoever which shall be deemed requisite or expedient for confirming the same, and carrying the gifts, bequests, or directions therein contained into full effect, according to the true intent and meaning of the same respectively. PROVIDED ALWAYS nevertheless, that the covenant or agreement lastly hereinbefore contained shall not extend to any lands, tenements, hereditaments, or other property, which may at any time hereafter descend or come to her the said (*wife*), in or to which he the said (*husband*) shall or may, or if these presents had not been made, would or might have been entitled to for any estate by the curtesy or otherwise in right of the said (*wife*) his wife, other than and except that in case the same shall amount to the annual sum of £ , she the said (*wife*) shall be allowed and paid by the said (*husband*) his heirs, executors, or administrators, the further annual sum of £ in addition to the provision hereinafter made for her the said (*wife*). AND THIS INDENTURE FURTHER WITNESSETH, that as to and concerning the provision so agreed to be made for the said (*wife*) as aforesaid, he the said (*husband*) doth hereby for himself, his heirs, executors, and administrators, covenant, declare, and agree with and to the said (*trustee*) his executors, administrators, and assigns, that he the said (*husband*) his heirs, executors, or administrators, or some or one of them, shall and will well and truly pay or cause to be paid unto him the said (*trustee*) his executors, administrators, and assigns, (or unto her the said (*wife*) his wife, and her assigns, if he or they shall

so direct (1)), one annuity or clear yearly sum of £ , of lawful money of that part of the United Kingdom of Great Britain and Ireland called England, by four even quarterly payments in the year, on the days or times following, (that is to say) the day of , the day of , the day of , and the day of , in every year, during the term of her natural life (2); and also a due and proportionable part of the same annuity or clear yearly sum of £ , for or in respect of so many days as shall happen to have elapsed from the last quarterly day of payment thereof next preceding the decease of the said (*wife*) up to and until the day of her death (being the same days and times as are mentioned in the condition of the hereinbefore in part recited bond), all and every of which said payments shall be made clear of all deductions and abatements whatsoever, and commence from the day of the date of these presents, and the first payment thereof to be made on the

SETTLEMENTS.

Separation.

(1) Although the wife's trustee covenants to indemnify the husband against the debts of the wife, yet to prevent the distress which may be occasioned by her improvidence, a prohibition is sometimes inserted against her anticipating the provision made for her, in which case see *ante*, p. 546, n. (1). Anticipation.

(2) If the annuity is to be paid during the joint natural lives of the husband and wife, on account of her being entitled, on surviving him, to a sufficient provision under her marriage settlement, or otherwise, say, Joint lives.

“ During the joint natural lives of them the said (*husband*) and (*wife*) his wife;”

And attend to the same variation throughout.

SETTLEMENTS.

Separation.

Power of distress.

day of now next ensuing, if she the said (*wife*) shall be then living, but if not, then a proportionable part thereof unto the said (*trustee*) his executors, administrators, and assigns, for the benefit of her estate, within the space of one calendar month after her decease (1). [AND the said (*husband*) for himself and his heirs, executors, administrators, and assigns, doth hereby charge and make chargeable the messuages or tenements, lands and hereditaments hereinafter described and demised, or intended so to be (2), with the payment of the same annuity or yearly sum of £ , at the times and in the manner hereinbefore mentioned; and doth hereby give and grant unto her the said (*wife*) his wife, and her assigns (3), that in case the same annuity or clear yearly sum of £ , or any part thereof, shall happen to be in arrear and unpaid by the space of twenty-one days next after any or either of the days or times hereinbefore appointed for payment thereof, she the said (*wife*)

Bond and covenant only.

(1) If the annuity or other provision made for the wife be secured by the bond or other personal security of the husband, proceed from hence to *post*, p. 681, marg. *.

Separation in pursuance of previous agreement.

(2) If the provision to be secured to the wife be made in pursuance of a previous agreement, made for that purpose on the marriage of the parties, say,

“ All and singular the messuages or tenements, lands and hereditaments, so limited in use to the said A. B. and C. D. for the term of ninety-nine years, in or by the said hereinbefore in part recited indenture of settlement as aforesaid.” And see *ante*, p. 372, n. (2).

Copyholds.

(3) If the annuity be secured upon copyholds, omit these powers of distress and entry; and see Vol. VI. No. VI. p. 193, n. (2).

being then living, or in case she shall be then dead, and a due proportion thereof shall remain unpaid by the space of ten days next after her decease, (the same in either case being lawfully demanded) then and from thenceforth, and as often as the same shall happen, it shall be lawful for the said (*wife*) or her assigns, or her or their lawful attorney or attornies, and she and they is and are hereby expressly authorised and empowered to enter into and upon all and singular the said messuages, lands, tenements, hereditaments, and premises, or into any part thereof, in the name of the whole, and to distrain for the said annuity or yearly sum of £ , and appraise, sell, and otherwise dispose of, and deal with the distress then taken according to law, in like manner as in the case of distress for rent reserved upon a lease for years, to the end and intent, that thereby or otherwise the same annuity or yearly sum, and all arrears thereof, and all expenses attending such entry and distress, shall be fully paid and satisfied.] **AND** Power of entry. **FURTHER**, that in case the said annuity or yearly sum of £ shall be unpaid by the space of forty days next after any or either of the days or times hereby appointed for payment thereof, it shall be lawful for her the said (*wife*) and her assigns, although no demand shall have been made of the same, and she and they is and are hereby also expressly empowered and authorised to enter into and upon all and singular or any of the aforesaid messuages, lands, tenements, hereditaments, and premises, and receive the rents, issues, and

SETTLEMENTS.

Separation.

SETTLEMENTS.

Separation.

FURTHER WITNESS, that for better securing the annuity.

growing produce thereof, to and for his, her, and their own use and benefit, until she and they shall thereby or otherwise have received and been fully paid the said annuity or yearly sum of £ , and all arrears thereof, whether then due or to become due during the time of the possession had in pursuance hereof, together with all costs, damages, and expenses to be occasioned by the non-payment thereof, which possession, when taken, shall be without impeachment of waste (1). AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, and for the better and more effectually securing the regular payment of the said annuity or yearly sum of £ , at the times and in the manner hereinbefore mentioned for payment thereof (2), [and also for and

Copyholds.

(1) If the annuity to be paid to the wife be secured upon copyholds, insert here a covenant to surrender them, or a declaration of the uses of a surrender already made for that purpose, as *ante*, p. 412, rider (E), and *ante*, p. 658, rider (A).

Leaseholds.

If it be secured on leaseholds, recite the lease under which the premises are holden, as *ante*, p. 624, and make the assignment and declaration of trusts similar to those *ante*, Vol. VI. No. VII. p. 225, *et seq.*

Money in the funds.

If secured on money in the funds, whether now standing in the names of trustees, in pursuance of a settlement made on the marriage of the parties, or to be transferred to the wife's trustees for the purposes of the present settlement, recite as *ante*, Vol. VI. No. VIII. p. 248, and assign or declare the trusts of the funds as in the same precedent, p. 257, n. (1).

Separation in pursuance of previous agreement.

(2) If the annuity to be paid to the wife be in pursuance of an agreement for that purpose contained in the settlement made on the marriage of the parties, instead of this demise, say,

“The said (*husband*) doth hereby authorise and em-

in consideration of the sum of ten shillings of lawful current money of England, to the said (*husband*) in hand well and truly paid by the said (*trustee*) at or before the execution of these presents, the receipt whereof is hereby acknowledged,] He the said (*husband*) HATH granted, bargained, sold, and demised, and by these presents DOTH grant, bargain, sell, and demise unto the said (*trustee*) his executors, administrators, and assigns, ALL, &c. (1) or howsoever otherwise the said messuages, lands, tenements, hereditaments, and premises, or any of them, now are or is, or heretofore were or was called, known, described, or distinguished, together with all and all manner of rights, privileges, easements, advantages, appendages, and appurtenances what-

SETTLEMENTS.

Separation.

The husband demises.

Parcels.

power, and direct and require them the said C. D. and E. F. and the survivor of them, and the executors and administrators of the survivor, and their and his assigns, to levy, raise, and pay the said annuity or yearly sum of £ , to and for her the said (*wife*) and her assigns, at the times and in the manner, and subject to the provisos, declarations, and agreements in or by the said in part recited indenture of settlement mentioned for levying, raising, and paying the same, or otherwise in relation thereunto; and to exercise and use all and every the powers and means thereby given to them and him for that purpose, according to the true intent and meaning of the same respectively;” and proceed as *post*, p. 679, marg. *.

(1) Insert here an accurate description of the lands, &c. intended to be demised, by their ancient and present name, situation, tenancy, &c.; and see *ante*, Vol. I. No. XXVII. p. 405, note.

SETTLEMENTS.

Separation.

To hold to the trustee for the term of 99 years.

Upon trust to permit husband to receive rents until default.

Then upon trust thereout, or by sale, &c. to pay the arrears.

soever to the same hereditaments and premises are belonging, or in any wise appertaining; and all the estate, right, title, interest, use, trust, claim, and demand whatsoever of him the said (*husband*) in, to, or concerning the same. To HAVE AND TO HOLD the said messuages, lands, tenements, hereditaments, and all and singular other the premises hereby granted and demised, or mentioned or intended so to be, with their appurtenances, unto the said (*trustee*) his executors, administrators, and assigns, from the day of the date of these presents, for the term of ninety-nine years thence next ensuing, without impeachment of or for any manner of waste, other than wilful and malicious waste; But nevertheless UPON THE TRUSTS, and to and for the intents and purposes, and subject to the provisos, declarations, and agreements hereinafter expressed of or concerning the same, (that is to say) UPON TRUST to permit and suffer the said (*husband*) his heirs and assigns, to receive and take the rents, issues, and profits of all and singular the same hereditaments and premises, to and for his and their own use, until default shall happen to be made in payment of the said annuity or yearly sum of £ , at the days or times, or in the manner hereinbefore appointed for payment thereof. AND UPON FURTHER TRUST, that in case the said annuity or yearly sum of £ shall happen to be in arrear and unpaid for the space of sixty days next after any of the times hereby appointed for payment thereof (although no demand shall have been made

thereof,) then by and out of the rents and profits of the said hereditaments and premises, or by leasing, mortgaging, selling, or otherwise disposing of the same, or any part thereof, or by bringing actions against the tenant thereof for arrears of rent, or making entries upon the same premises, or any of them, at his or their discretion, or by any other lawful means whatsoever, to raise, pay, and satisfy the same annuity or yearly sum of £ , together with all costs, damages, and expenses which shall be occasioned by the non-payment thereof, or in any wise relating to the execution of the said trusts of the said term and premises; and upon the receipt of the said annuity, or such part thereof as shall be so in arrear as aforesaid, do and shall pay and apply the same to or for such person or persons, and for such ends, intents, and purposes, and in such manner as she the said (*wife*), notwithstanding her coverture, shall from time to time, by any writing under her hand, direct or appoint the same, or any part thereof, to be paid, applied, and disposed of; and for want of such direction or appointment, and as to so much thereof of which no such direction or appointment shall be made, to pay the same into the proper hands of her the said (*wife*), to and for her own use and benefit, to the end and intent that the same, or any part thereof, may not be in any way or manner subject to the debts, powers, disposition, control, or engagements of the said (*husband*); and it is hereby agreed and declared, that the receipt or receipts

SETTLE-
MENTS.

Separation.

SETTLEMENTS.

Separation.

In case of sale, money to be invested in the funds or on real security.

of the said (*wife*) or of the person or persons to whom she shall direct or appoint the same to be paid in manner aforesaid, shall be a good and sufficient acquittance and discharge, and good and sufficient acquittances and discharges to the said (*trustee*) his executors or administrators, or other the person or persons so paying or applying the same (1). AND UPON THIS FURTHER TRUST, that in case the said annuity or yearly sum of £ , and such costs, charges, and expenses as aforesaid, shall be paid and fully satisfied, by or out of the rents, issues, and annual proceeds of the said hereditaments so hereby charged with the payment thereof, that he the said (*trustee*) his executors, administrators, and assigns, do and shall, from time to time, permit and suffer, and authorise and empower the said (*husband*) his heirs and assigns, to receive and retain, or otherwise well and truly pay unto him and them, all and every the residue and surplus of the same rents and profits, to and for his and their own proper use and benefit; BUT in case the said annuity or yearly sum shall be raised and paid by any sale, mortgage, or

Children to be supported by wife.

(1) If it be agreed that any child or children of the marriage shall live with and be supported by the wife, add,

“ So nevertheless that she the said (*wife*) do thereout and therewith, or otherwise educate, maintain, and support the said children or child so to be under her care and tuition as aforesaid, so long as she or they should continue to reside with her the said mother.”

other disposition of the said hereditaments and premises, or any part thereof, for all or any part of the said term of ninety-nine years hereby granted for that purpose, then UPON TRUST after full payment and satisfaction of the same annuity, costs, charges, and expenses aforesaid, that he the said (*trustee*) his executors, administrators, or assigns, do and shall forthwith invest the residue or surplus of the money to arise thereby, in the purchase of bank annuities, or upon other government or real security, at his or their discretion, in the name or names of him the said (*trustee*) his executors, administrators, or assigns, and the name or names of some other person or persons to be appointed by the said (*husband*) upon proper trusts to be declared in writing under the hand and seal of the said (*trustee*) his executors, administrators, or assigns, to keep down all future payments of the said annuity or yearly sum of £ in such manner as counsel shall advise, and in the meantime and until such declaration of the trusts shall be executed, UPON TRUST by and out of the dividends, interest, and yearly proceeds thereof, if sufficient, and if not, then by sale of the principal sum so to be invested, or a competent part thereof, to pay the same, together with all reasonable costs and expenses incident to the execution of the said trust; and from and after full payment and satisfaction thereof, IN TRUST to pay and apply the residue and surplus of the said dividends, interest, and proceeds from time to time unto the said (*husband*) his executors,

SETTLEMENTS.

Separation.

*

And surplus to husband.

SETTLEMENTS.

Separation.

Receipt of
trustee to be
good discharge.

Proviso for the
cessor of the
term on the
death of wife,
&c.

administrators, and assigns, for his and their own use and benefit. AND the said (*husband*) doth hereby expressly declare and agree, that the receipt of the said (*trustee*) his executors, administrators, or assigns, shall be a good and sufficient discharge to any and every purchaser, mortgagee, or tenant of the said hereditaments and premises, for such sum or sums as shall therein be acknowledged to be received, and wholly exonerate him and them from the necessity of seeing to the application thereof, or of ascertaining or inquiring into the necessity or occasion of any such sale, mortgage, or other disposition of the said premises being made. PROVIDED ALWAYS, and it is hereby declared and agreed by and between the parties to these presents, that from and after the decease of the said (*wife*) or other cessation of the said annuity or yearly sum of £ , and full payment and satisfaction of all arrears thereof up to the day of her death, and of all costs and expenses occasioned by reason of any default in payment thereof, the said term of ninety-nine years hereby granted of and in the aforesaid hereditaments and premises, or so much or such part of the said term as shall not have been disposed of for any of the purposes aforesaid, shall cease, determine, and be void; and then also and immediately thereafter, the trustee or trustees of the same hereditaments and premises, and of all funds and securities upon which any monies arising from the sale or other disposition of the same shall have been invested, shall stand possessed

thereof in trust for the said (*husband*) his heirs, executors, and administrators, or otherwise as he shall direct or appoint in that behalf. PROVIDED ALWAYS, and it is hereby agreed and declared by and between all the parties to these presents, and the true intent and meaning of these presents, and of the said parties is, that notwithstanding any thing hereinbefore contained to the contrary, if the said (*husband*) shall at any time during the joint lives of himself and the said (*wife*) his wife, be sued or prosecuted by the said (*wife*) or by any person or persons on her behalf, in order to compel or induce him to pay or allow unto her any further or other annual or other sum or sums of money, or other provision whatsoever, than is hereby secured to her as aforesaid, for or by way of alimony, or otherwise for her support, maintenance, or use, during the separation of her and the said (*husband*), or if he the said (*husband*) shall at any time be legally or rightfully sued or prosecuted for or in respect of any debts or demands incurred or contracted by or on the part of the said (*wife*) during the separation of her and the said (*husband*) or with or by her means, procurement, or concurrence (1), or if she shall re-

SETTLEMENTS.

Separation.

Husband may retain out of annuity sums he may be obliged to pay on wife's account.

*

(1) If the provision made for the wife be also for the support of any of her children, add,

Children to be supported by wife.

“ Or for or on account of the maintenance or education of any or either of the child or children so hereby agreed to be under her care as aforesaid, so long as they, or any, or either of them shall continue under her tuition, care, or management, or any costs or charges which he the said

SETTLEMENTS.Separation.

fuse to acknowledge and duly concur in the levying and declaring the uses of a fine to exonerate the estate of the said (*husband*) from her title to dower when thereunto requested; then and in either of the said cases it shall be lawful for him the said (*husband*) his heirs, executors, and administrators, to retain and deduct out of or from the next and every succeeding quarterly payment or portion of the said annuity or yearly sum of £ , all and every such sum and sums of money as he the said (*husband*) his heirs, executors, and administrators, shall be so lawfully and rightfully charged with, or compellable, or be liable to pay, together with interest after the rate of £ per cent. per annum for all such sums as he or they shall actually have paid or pay, until repayment of the same, with all costs, charges, and expenses, which he or they shall be put unto and sustain by reason of any action, suit, or proceeding which may be prosecuted or commenced against him or them, or his or their goods or chattels, or lands and tenements, or for or on account of any such debts or demands as aforesaid; and he the said (*trustee*) his executors and administrators, shall and lawfully may, and he and they are hereby expressly directed to retain for and pay unto him the said (*husband*) his heirs, executors, and administrators, by and out of the monies which shall come to his or their hands, under or by virtue of all or any of the trusts or

(*husband*) his executors or administrators shall or may sustain or be put unto, for or on account of them, or any, or either of them."

powers aforesaid, all and every or any of the same debts and demands, and costs, charges, expenses, and interest as aforesaid (1). AND the said (*husband*)

SETTLEMENTS.

Separation.

Covenant by husband for title.

(1) If the lands demised to the trustee be already chargeable with a jointure to the wife by her marriage settlement, or she be entitled to dower, it will be necessary that a fine should be levied by her to effectuate the present provision; in which case say,

Lands chargeable with jointure or dower.

“AND WHEREAS the aforesaid messuages, lands, tenements, and hereditaments were, upon the marriage of the said (*husband*) and (*wife*) limited and settled to the use of her the said (*wife*) and her assigns for the term of her natural life, as, and for, and in the nature of her jointure, to take effect from and immediately after the decease of him the said (*husband*), in case the said (*wife*) should happen to survive him. AND WHEREAS it hath been agreed between the parties hereto, that a fine should be levied of the said hereditaments, for the purpose of indemnifying the said (*husband*) against such debts and demands of the said (*wife*) as aforesaid, and for the better effectuating other the purposes hereinbefore expressed. NOW THIS INDENTURE FURTHER WITNESSETH, that for carrying the said agreement into execution, and for the considerations aforesaid, the said (*husband*) doth hereby covenant and agree, and the said (*wife*) doth hereby consent and engage with and to the said (*trustee*) his heirs, executors, and administrators, that they the said (*husband*) and (*wife*) shall and will, at the proper costs and charges of him the said (*husband*), before the end of

Term next ensuing the date of these presents, acknowledge and levy in due form of law, before the justices of his majesty's court of Common Pleas, at Westminster, unto the said (*trustee*) a fine, *sur concesserunt*, or such other fine as shall be deemed proper in that behalf, of all and singular the aforesaid messuages, lands, and hereditaments, with the appurtenances, by such names and descriptions, and in such manner as shall be thought proper, and thereby

SETTLE-
MENTS.

Separation.

doth hereby for himself, his heirs, executors, and administrators, covenant, declare, and agree with

grant and demise all and every the said hereditaments and premises, with the appurtenances unto the said (*trustee*) for the term of ninety-nine years, to be computed from the death of the said . AND it is hereby further agreed by and between the said parties to these presents, that the said fine, so as aforesaid, or in any manner, or at any other time to be levied, shall be and enure to the intent and purpose, and he the said (*trustee*) his executors, administrators, and assigns, shall stand and be possessed of all and every the aforesaid messuages, hereditaments, and premises, for and during the said term of ninety-nine years, determinable as hereinafter mentioned, upon the several trusts, and to and for the several intents and purposes hereinafter expressed concerning the same, that is to say, UPON TRUST that if the said (*husband*) his heirs, executors, or administrators, shall at any time hereafter be sued and prosecuted by the said (*wife*) or by any other person or persons on her behalf, for any of the purposes last hereinbefore mentioned, then and in every such case, and from time to time as often as the same shall happen, the said (*trustee*) his executors, administrators, and assigns, shall and lawfully may, by, with, and out of the rents, issues, and profits of the said hereditaments and premises, or by mortgage or sale of the same, or any part thereof, for all or any part of the said term of ninety-nine years, or by such other lawful ways and means as he the said (*trustee*) his executors, administrators, and assigns, shall think proper, levy, and raise for, and pay unto him the said (*husband*) his executors or administrators, all and every such sum and sums of money, and all such costs, charges, damages, and expenses as he the said (*husband*) his heirs, executors, or administrators, shall at any time or times hereafter be charged with or compellable to pay, or be put unto, or which he or they shall or may sustain or suffer, for, or in respect, or by reason or means of every and any such debts, demands, suits, prosecutions,

and to the said (*trustee*) his executors, administrators, and assigns, in manner following, (that is to say) that for and notwithstanding any act, deed, matter, or thing whatsoever made, done, occasioned, or knowingly suffered or omitted by him the said (*husband*) to the contrary, he the said (*husband*), at the time of the sealing and delivery of these presents, hath in himself full power and lawful and absolute right and title to charge the said hereditaments and premises with the payment of the said annuity or yearly sum of £ , for the natural life of the said (*wife*) in the manner aforesaid; and also to grant and demise the same hereditaments and premises unto the said (*trustee*) his executors, administrators, and assigns, for the said term of ninety-nine years, upon the trusts, and for the intents and purposes hereinbefore expressed concerning the same. AND likewise, that it shall and will be lawful for him the said (*trustee*) his executors, administrators, and assigns, at all times hereafter, and from time to time, and as often as the said annuity or yearly sum of £ shall be in arrear as aforesaid, to receive the same out of and from the said hereditaments and premises, and have and exercise the several powers of distress and entry, and other powers and authorities

SETTLEMENTS.

Separation.

And to demise the premises.

Trustee shall quietly enjoy.

or proceedings as aforesaid, or in any wise relating to the acts or conduct of her the said (*wife*) contrary to the stipulations or agreements hereinbefore contained, according to the true intent and meaning of the same."

**SETTLE-
MENTS.**

Separation.

Free from in-
cumbrances.Further assur-
ance.

hereby given for that purpose, without any lawful hindrance, eviction, disturbance, claim, or demand whatsoever, of or by him the said (*husband*) or by any person or persons whomsoever lawfully or rightfully claiming from, under, or in trust for him or his ancestors, customary lessees or tenants only excepted as to and concerning the estates and interests, under or by virtue of their respective leases. AND that free and clear, or by him the said (*husband*) his heirs, executors, or administrators, effectually protected and indemnified of and from all and singular other annuities, estates, rights, titles, interests, charges, and incumbrances whatsoever. AND further, that upon and after any default shall be made in payment of the said annuity or yearly sum of £ , at the time the same is hereby appointed to be paid, he the said (*husband*) and all and every person and persons so lawfully or rightfully claiming any estate, right, title, or interest, in, to, or concerning the hereditaments and premises hereby charged with the payment thereof, as aforesaid, (except as aforesaid) shall and will, at his and their own expense, at all times hereafter during the subsistence of the said annuity or yearly sum of £ , upon the reasonable request of the said (*trustee*) his executors, administrators, or assigns, do and execute, or cause and procure to be done and executed, and concur in and assent to all such further acts, deeds, matters, and things whatsoever, as well for the better and more effectually or satisfactorily assuring the same unto

the said (*wife*) and her assigns, and charging the said hereditaments and premises with the payment thereof, as for demising the same hereditaments and premises unto the said (*trustee*) his executors, administrators, or assigns, or unto any purchaser or mortgagee thereof, for the then residue of the said term of ninety-nine years, and otherwise carrying these presents into effect, according to the intent and meaning thereof, as the said (*trustee*) his executors, administrators, or assigns, or his or their counsel in the law, being of the degree of a barrister, shall reasonably advise and require.

SETTLEMENTS.

Separation.

AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the covenants and agreements hereinbefore contained by and on the part of the said (*husband*) and of the provision hereby made for the said (*wife*), and other the premises aforesaid, the said (*trustee*) doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said (*husband*) his executors, administrators, and assigns, by these presents, and she the said (*wife*) doth hereby freely and voluntarily consent, declare, and agree in the manner following, (that is to say) (1) that

Covenant by trustee that wife shall not interrupt the husband.

(1) The efficacy of a deed of separation depends entirely upon the covenants entered into between the husband and the trustees, as neither the courts of law or equity recognize any power in the husband and wife to dissolve or vary the rights or duties incident to the marriage contract; Lord St. John v. Lady St. John, 11 Ves. 537; Worrall v. Jacob, 3 Mer. 256. Hence a court of equity will not decree a specific performance of the

Covenants by trustee.

SETTLEMENTS.

Separation.

she the said (*wife*) or any person or persons by or with her procurement, concurrence, or assent, shall not nor will at any time or times hereafter, in any way or manner molest, disturb, or without his consent visit him the said (*husband*) at or in his place of abode, or dwelling, or elsewhere, nor contract, or cause to be contracted, any debts or engagements whatsoever, in the name, or on account of the said (*husband*); nor shall nor will exhibit, institute, or prefer in any spiritual, ecclesiastical, or other court, any suit, libel, or process, or use or take any other steps or proceedings against him the said (*husband*) for conjugal rights or society, or to compel, oblige, or induce him to cohabit or live again with her the said (*wife*); nor prosecute, commence, or sue forth any writ, process, suit, or action against him the said (*husband*) his heirs, executors, or administrators, for any further or other annual or other sum or sums, allowance or provision, for or by way of alimony, pin-money, or other purpose whatsoever, beyond or in addition to the provision hereby secured to or made for her as aforesaid. AND further, that

Covenant by the trustee to indemnify the husband against the debts of the wife.

agreements between the parties, *ib.*; nor will a court of law relieve him from his promise to pay a debt contracted by her subsequently to the separation, even though made under a mistake of his legal protection; *Hornbuckle v. Hornbury*, 2 Star.: if, however, the wife, on separation, have a provision made her by the husband, or allowed her out of funds of her own, sufficient to support her, according to the situation in life of her husband, he will not afterwards be liable for her debts; see *Ludlow v. Wilmot*, 2 Star. 86, and cases there cited; also *ant.*, p. 664, n. (1).

he the said (*trustee*) his heirs, executors, or administrators, shall and will from time to time, and at all times hereafter, well and sufficiently defend, keep harmless, and indemnified (1) him the said (*husband*) his heirs, executors, and administrators, and his, their, and every of their lands, tenements, goods, chattels, and effects from and against all sum and sums of money, costs, charges, damages, and expenses whatsoever which the said (*husband*) his heirs, executors, or administrators shall or may be obliged or liable to pay, or shall suffer, sustain, or be put unto, for or on account of any debt or debts, or other engagements, which at any time or times hereafter, during the said separation, shall or may be contracted or incurred by her the said (*wife*) whether for or on account of any board, lodging, goods, wearing apparel, or other matter or thing whatsoever; and also of, from, and against all claims and demands of or by her the said (*wife*) upon him the said (*husband*) in his lifetime, for or by way of alimony or separate maintenance, other

SETTLEMENTS.

Separation.

(1) A settlement upon a wife after marriage, unless for some valuable consideration arising to the husband, is holden to be within the statute of frauds, and void as against specialty creditors, and subsequent, *bona fide*, purchasers; see *ante*, p. 285, n. (2); but a covenant by any friend of the wife on a separation, to indemnify the husband against her debts, has been holden to be a sufficient consideration to satisfy the act and support the provision made for her; *Stephens v. Olive*, 2 Brow. Ch. Rep. 90; *King v. Brewer*, *ib.* 93, n.; see *Seeling v. Crawley*, 2 Vern. 386; *Angier v. Angier*, Prec. Ch. 497; *sed vid.* *Lord St. John v. Lady St. John*, 11 Ves. jun. 536; see also *ante*, p. 664, n. (1), p. 687, n. (1).

Indemnity to husband against wife's debts.

SETTLE-
MENTS.

Separation.

If husband and wife agree to live together again, the deed to be void.

than as aforesaid, or upon his heirs, executors, or administrators, or his or their lands, tenements, goods, and chattels respectively, after his decease, either for dower or thirds at common law, or otherwise howsoever, or under or by virtue of the statute made for distribution of intestates' effects, or other matter, cause, or thing whatsoever; and of, from, and against all actions, suits, processes, and proceedings, and costs, damages, and expenses which shall or may be sustained by him the said (*husband*) his heirs, executors, or administrators, by reason of or in relation to the matters or things aforesaid, or any of them (1). PROVIDED ALWAYS nevertheless, and it is hereby declared and agreed by and between the several parties hereto, that in case the said (*husband*) and (*wife*) his wife shall at any time hereafter voluntarily and mutually consent and agree, in or by any writing or writings under both their hands, to be by them respectively subscribed, and attested by and in the presence of two or more credible witnesses, to live and cohabit, or in case the said (*husband*) and (*wife*) shall and do voluntarily and by mutual consent actually live and cohabit together as man and wife for the space or period of one calendar month, then and in that case, or in either of the said cases, these presents, and every matter and thing herein contained, (save only and except this

Appointment by wife in favour of her husband.

(1) If any provision is to be made by the wife out of her separate property, see *post*, p. 698, rider (A).

present proviso or agreement) shall from thenceforth cease, be void, and of none effect, in like manner as if the same had not been made, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding, and the same and every counterpart thereof, if any, shall be forthwith cancelled and destroyed. {AND for the due observance and performance of the covenants, stipulations, and agreements herein contained on the part of the said (*husband*) her husband, to be observed and performed, he the said (*husband*) doth hereby bind himself, his heirs, executors, and administrators, unto the said (*trustee*) his executors, administrators, and assigns, in the penal sum of £ , of lawful current money of England; and for the due performance of the covenants, stipulations, and agreements hereinbefore contained on the part of the said (*wife*) to be observed and performed, he the said (*trustee*) doth hereby bind himself, his heirs, executors, and administrators, unto the said (*husband*) his executors, administrators, and assigns, in the penal sum of £ of like lawful and current money (1), with interest for the said sum after the rate of five pounds per cent. per annum, until the same shall be paid (2).} IN WITNESS, &c.

SETTLEMENTS.

Separation.

Nomine pœnæ.

(1) If there be more trustees than one, add a proviso for filling up the vacancies occasioned by death, resignation, &c. and the usual indemnifications, as in *ante*, No. IV. p. 448, V. p. 574, or VI. p. 615, according to the nature of the property settled.

Two or more trustees.

(2) If it be intended, by reason of the property being the

Wife's settlement not to be affected.

**SETTLE-
MENTS.**

wife's, or its being so agreed, that the settlement should not affect the wife's title under her settlement, say,

Separation.

“ PROVIDED ALWAYS, and it is hereby agreed and declared by and between the said (*husband*) and the said (*trustee*) on the part and behalf of the said (*wife*) that these presents, or any thing herein contained, shall not alter, vary, or in any wise affect the settlement or provisions made previously to and in contemplation of the marriage between them the said (*husband*) and (*wife*) in the event of her surviving her said husband, but the same shall be in full and like effect and operation, in all things, as if these presents had not been made.”

Registry.

. This deed, although it contain the grant of a life annuity, need not be memorialized under the late annuity act of 53 Geo. III. c. 141; and see sec. 10 of that act.

SETTLEMENTS.

Separation.

(A) *Appointment by a Wife of Part of a Rent-Charge, in pursuance of a Power, to her Husband on a Separation; the Rest of her Property to be at her own Disposal.* (See *ante*, p. 690, n. (1).)

After reciting the deed by which the power is reserved and the agreement of appointment, &c. add,

“NOW THIS INDENTURE [FURTHER] WITNESSETH, that she the said (*wife*) by virtue and in exercise of the power of appointment to her given or reserved by the said in part recited indenture or deed of settlement, and by virtue and in exercise of every other power and authority her in that behalf in any wise enabling, DOTH by this present deed, or instrument in writing, by her sealed and delivered in the presence of the two credible persons whose names are hereupon indorsed as witnesses attesting the execution hereof by her the said (*wife*), direct and appoint, that the trustees and trustee for the time being of the said in part recited indenture or deed of settlement shall by, with, and out of the said annuity or yearly sum of £ , pay unto the said (*husband*) and his assigns, during the term of his natural life, an annuity or clear yearly sum of £ by equal quarterly payments, on the day of , the day of , the day of , and the day of , in each and every year, without making any deduction or abatement thereout whatsoever, the first payment thereof to begin and be made on the day of next ensuing the day of the date of these presents. AND THIS INDENTURE FURTHER WITNESSETH, that in consideration of the appointment hereinbefore made, He the said (*husband*) for himself, his heirs, executors, and administrators, DOTH hereby covenant, promise, and agree to and with the said (*trustee*) his executors and administrators, that all the clothes, monies, jewels, furniture, and ornaments of the person of the said (*wife*) and all other personal estate

Appointment by wife of a rent-charge.

Personal estate of wife to be retained by her.

SETTLE-
MENTS.

Separation.

and effects of what nature or kind soever now belonging, or at any time hereafter to belong to the said (*wife*), and all savings to be acquired from the residue of her separate estate, and all such sums of money and personal estate as she the said (*wife*) or the said (*husband*) in her right shall or may at any time or times during the said separation acquire or become entitled to at law or in equity by purchase, gift, will, intestacy, or otherwise, shall be the sole and separate property of the said (*wife*), and that it shall and may be lawful for her the said (*wife*) to manage, order, sell, dispose of, and use the same, in such manner, to all intents and purposes, as if she were a feme sole and unmarried; and that the said (*husband*) shall and will permit and suffer any will or codicil of the said (*wife*) of or affecting her separate estate to be proved in any ecclesiastical court, and shall not obstruct any executor or executrix whom she may appoint, in the probate or execution thereof, and that all and every person and persons unto whom she the said (*wife*) shall, by such her will or codicil, bequeath her said separate estate, or any part thereof, shall and may, at all times thereafter, peaceably and quietly have, hold, receive, take, and enjoy the same, without any molestation, hindrance, or interruption whatsoever, from or by him the said (*husband*) his executors or administrators, or from or by any person or persons whomsoever, claiming, or to claim, through or under him or them, or through or under his or their means, privity, or procurement, and that he the said (*husband*) shall and will from time to time, at the request of the said (*wife*) and at the costs and charges of her separate estate, make, do, and execute all such reasonable acts, deeds, assignments, and assurances in the law, as the counsel of the said (*wife*) shall advise for assigning and assuring all her separate estate (subject to the said annuity or yearly sum of £ , hereby appointed to her as aforesaid) to and vesting the same in such person or persons, upon and for such trusts, intents, and purposes, and in such manner and form as the said (*wife*) shall from time to time during the said separation (notwithstanding her coverture) direct or appoint,

SETTLEMENTS.

Separation.

Husband will renounce administration, and release.

Husband appoints wife his attorney.

Further assurance by husband.

AND also that he the said (*husband*), in case he shall survive the said (*wife*) and shall be required so to do, shall and will renounce letters of administration; and also release all his right to her separate estate, save only and except the said annuity or yearly sum of £ during his life, in favour of the person or persons who shall be entitled thereto, under any gift, disposition, appointment, or bequest of the said (*wife*) and that the receipt or receipts of the said (*wife*) shall, notwithstanding her coverture, be, from time to time, and at all times, a good, valid, and sufficient release and discharge for any sum or sums of money paid, and for any goods, chattels, or other personal estate delivered to her the said (*wife*) for and included in her separate estate. AND the said (*husband*) doth hereby make, ordain, nominate, constitute, and appoint, and in his place and stead put and depute the said (*wife*) his true and lawful attorney, for him, and in his name, or otherwise (but at the costs and charges of the separate estate of her the said (*wife*),) to commence, and prosecute, and also to appear to and defend all and every or any actions or action, suit or suits, at law or in equity, touching, or in anywise concerning her separate estate, or touching, or in anywise concerning the personal estate or effects of the said (*her father*) deceased, or the executorship of his said last will and testament. AND he the said (*husband*) doth hereby further covenant, promise, and agree to and with the said (*trustee*) his executors, administrators, and assigns, that he the said (*husband*) shall and will from time to time, and at all times hereafter, at the request of the said (*wife*), or of him the said (*trustee*) his executors, administrators, or assigns, but at such costs and charges as lastly aforesaid, make, do, and execute, or cause or procure to be made, done, and executed, all such further acts and things whatsoever, or give and execute unto the said (*wife*) all such further powers and authorities, for the better and more effectually authorising and enabling her to commence, and prosecute, and also to appear unto and defend all and every or any such actions or action, suits or suit as aforesaid, and to do, perform, and execute all such

**SETTLE-
MENTS.**

Separation.

acts, matters, and thing, in any wise relating thereto, as she the said (*wife*) or as he the said (*trustee*) his executors or administrators, or any of them, or as her, his, their, or either of their counsel in the law shall reasonably advise and require, [so that for the doing thereof he the said (*husband*) shall not be required to go from his then place of abode.] IN WITNESS," &c.

CLASS VIII.

WILLS.

WILLS.

*General
Remarks.*

GENERAL OBSERVATIONS

ON

WILLS

OF

REAL AND PERSONAL ESTATE.

It would be a fruitless attempt to offer the proper form of every mode of disposition of the various species of devisable property,—a great variety is, however, given in the subsequent pages, and the following observations (1) will serve to show, in many of the most common cases, which form will best answer the purpose intended.

Let us suppose a person entitled to real and personal estates, and having a wife, sons, and daughters, and that it is his intention to secure to his wife an annuity for life, and to devise his real estate to his eldest son, charged with portions for his younger sons and daughters. In this case the will may be made in the following manner :

Let him devise the real estate to trustees, to the use, intent, and purpose that his wife shall take a specified annuity with the usual powers of distress and entry, and subject thereto, to the use of trustees for a term of two thousand years, to commence from his death, upon trusts after-mentioned ; remainder to the use of his first and other sons successively in tail ; re-

General
remarks.Devise of real
and personal
estates, pro-
viding an an-
nuity to wife
and eldest son
in tail, and
portions for
children.As to the real
estates.

(1) See *ante*, Vol. I. p. 426, n. (†).

WILLS.

*General
Remarks.*

mainder to his daughters as tenants in common in tail; with cross remainders over; the trusts of the term may be in the first place for better securing the annuity to the wife during her life, and to raise and pay a proportional part to her executors, and to raise portions for younger children, viz. if only one child, such a sum—if two, such a sum; or the trust may be to raise a specific sum, suppose £3000, for each younger child.—The portions of sons to vest at twenty-one, and of daughters at that age or marriage with the consent of the wife if living, and the testator's widow, or if dead or married again, with the consent of the trustees.—~~The~~ trustees must be empowered out of the rents of the premises comprised in the term to raise maintenance, which should be left to their discretion, but should be restricted to not more than two per cent. till the age of twelve, and three per cent. till the age of fifteen, and four per cent. till the age of twenty-one or marriage; such maintenance to be paid to the wife during her widowhood to be applied by her, but she not to be obliged to keep any account; there must be the usual proviso of survivorship amongst the children, but with this distinction, that if any of the younger sons become an eldest or only son his portion to go to the rest, otherwise on attaining twenty-one he would become entitled to a money portion as well as the estate; and all the younger children but one may die under twenty-one, in which case the surviving child, by having all the portions accumulate upon him or her, might have a provision equal to the eldest son. Where the estate is not large, it should be provided that no one child should by accruer have more than such a sum. There must be a proviso that the trustees shall suffer the residue of the rents and profits comprised in the term, which shall not be applied for the purposes before-mentioned, to be received by the person entitled immediately expectant on the term, but if that surplus be more

than is wanted for the maintenance of the eldest son, a trust may be inserted that the trustees shall under the two thousand years term raise such sums as they shall think proper for his maintenance during his minority, and that the residue of the rents remaining unapplied shall be invested and disposed of in the same manner as the residue of the personal estate is afterwards directed to be invested or disposed of. Then must follow the usual proviso for ceasing the term when all the trusts are satisfied. This completes the disposition of the real estate.

WILLS.

*General
Remarks.*

With regard to the personal estate, if it should not be deemed by the testator to be amply sufficient for the payment of the debts, the first trust of the two thousand years term should be to raise and pay out of the real estate such sums of money as the trustees shall judge necessary or expedient for payment of the debts; or to borrow money for that purpose; and the personal estate may be directed to be applied as it comes in, either to pay off any interest then undischarged, or in paying off, or reducing the sums borrowed on mortgage, and the residue of the personal estate may be directed to be laid out in lands and settled as after-mentioned. But if the personal estate is known to be amply sufficient for payment of debts, such part of it as does not consist of furniture, or the like, and is not bequeathed to the wife or children, may be given to trustees, in trust thereout to pay the debts and funeral expenses, and any small pecuniary legacies. And the residue of the personal estate may be directed to be laid out in the purchase of lands, and settled to such uses as real estate; but in order to prevent the wife from having a double annuity and the younger children from having double portions, it should be declared, that the lands to be purchased shall be considered only as an additional security for raising and paying off the jointure annuity and por-

As to the personal estate.

WILLS.*General
Remarks.*

tions. The trustees should be authorised in the meantime and until a purchaser shall be found to invest the money upon government securities, or place it out upon mortgage. If, however, the surplus of the personal estate should be so inconsiderable as not to be thought worth the expense of investing it in land, such surplus may be directed to accumulate, and to be in trust for such of the sons as shall first attain twenty-one; or in trust for the daughters equally.

If the testator intend that only a part of the surplus of his personal estate remaining after payment of debts shall be laid out in lands, and that the remainder shall go to his wife or younger children, he may in the beginning of his will direct such a sum to be laid out; and connect the limitations of the land to be purchased with the limitations of the real estate.

In cases where the personal estate is but small, there should be a power under the trusts of the two thousand years term to take up money for the purchasing of any lands which may be contiguous to or very convenient to go with the family estate.

If debts are to be provided for out of the real estate, they also may be directed to be raised under the trusts of the two thousand years term, which is better than directing such a sum to be raised as the personal estate may be deficient to pay, as in that case a sum sufficient for the payment of all debts may be taken up at once, and the creditors satisfied, and the personal estate, which may not be wholly got in for some time, may be applied in exonerating the real estate from the money borrowed.

It has been doubted, whether in a case where the real estate was subjected to the payment of debts in aid of the personal estate, any money could be raised till the whole of the latter had been got in and applied; but the better opinion seems to be that the real estate may be mortgaged before the per-

Debts charged
on real estate.



sonal estate is wholly gotten in and applied, see Co. Lit. p. 290, b. The best way, however, is to make the real estate chargeable in the first instance, as above proposed.

WILLS.

*General
Remarks.*

If there be any leasehold lands either for lives or years which are to be intailed with the family estate, there should be a direction to renew the leases, either out of the rents and profits of the lands therein comprised or by mortgage thereof; or that money for the purpose should be raised under the trusts of the two thousand years term.

Intail of leaseholds.

Where a testator's fortune consists partly of real and partly of personal estate, and it is his intention to secure an annuity to his wife, and equal provisions for all his children, the way will be to devise the real estate to trustees.

Real and personal estate; annuity for wife, and rest for children equally.

In trust to sell and apply the money for the purposes after-mentioned, and to declare that the trustees, their heirs, executors, &c. (for the heir of the surviving trustee may be the person who will sell, and therefore have the disposition of the money arising from the real estate) shall stand possessed of the money arising from the personal estate, and by the sale of the real estate, in trust to pay the funeral expenses, debts, and legacies, and to place out on government or real securities such a sum of money as will produce the required annuity for the wife. If all the children are young, the next trust may be to place the surplus out at interest, and direct that the money so placed out shall be in trust for all the children equally, with benefit of survivorship in the usual manner, and with powers to apply the interest of their shares for their maintenance, and to raise part of the principal for placing them out in business, &c. But if some of the children are nearly of age, there need not be a direction to place out the whole trust-money, but the residue may immediately after the provision for the wife be directed to

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*General
Remarks.*

be in trust for all the children as above, with a direction that the shares of such of them as shall be under twenty-one at the testator's death shall be placed out at interest, and that the interest therefrom arising shall be applied for their maintenance till their portions become payable. There must be the usual declaration that until the sale of the real estate the rents shall be applied as the interest of the money arising by the sale is made applicable, and the clause that the receipt of the trustees shall be a sufficient discharge should be inserted. If the testator is in business, the clause to compound debts due to his estate, and to admit debts due from him on such evidence as the trustees shall think reasonable, may be useful. And if the children are very young and numerous, it may be a useful provision to direct that the wife (if she should be a person equal to it) shall annually settle and allow the trustee's accounts, and that after being settled and signed they shall not be questioned by the children or any claiming under them; but such a clause as this is more particularly useful where a share of the residue of the testator's personal estate is left to one of his daughters, being a married woman, for her separate use for life, and at her death amongst her children, for they may be spirited up by their excluded father to give the trustees all possible trouble.

Personalty only. The above plan of a will applies equally where there is personal estate only to be disposed of amongst children. In which case the provision for the wife, which is generally by way of annuity, may be made either by directing the trustees or executors to place out a certain sum at interest, and pay her the produce, which will then vary accordingly as the interest of money is higher or lower, or, which seems a preferable mode, by directing such a sum to be placed out on government security as will give the income required, in which case no more than is wanted need be invested; on the decease, or second marriage of

the wife, (accordingly as it is the testator's intention), the money appropriated for answering the annuity may be directed to fall into and follow the disposition of the funds from which it is directed to arise.

WILLS.

*General
Remarks.*

If the interest of the children's portions will be more than sufficient for their maintenance, the surplus should not be left unregarded, (for in that case it would not go over to the others under the clause of survivorship, but would vest in the next of kin of any child dying under age), but should be directed to be added to and go with the portion from which it arises.

If the trust estate is so inconsiderable as to be incapable of maintaining the wife and children without an application of the whole, or part of the principal, it must be given to trustees, in trust to apply the surplus, after payment of his debts, for the maintenance of the wife, and the maintenance, education, and benefit of the children, in such manner as the trustees shall think proper.

Where the testator has a small landed property, and wishes to make a provision for his family, consisting of a wife, a son, and daughters, the son being of age and the daughters nearly so, the way is to devise the land to a trustee, to the use of such trustee for a term of years; remainder to the son in fee. The trusts of the term to be for raising and paying the testator's debts, an annuity to his wife, and the portions to his daughters, to be vested at twenty-one, or marriage with the consent of the mother, if living, or if dead, with the consent of the trustee, his executors, &c. And if the daughters die before their portions become vested, such portions not to be raised: there should be the usual declaration that the receipt of the trustee shall be a sufficient discharge; and for the cesser of the term.

Small real
estate.

No. I.

Will of Freehold, Copyhold, and Leasehold Estates, in Strict Settlement; also of Money in the Funds, and other Personalty. With a Variety of special and ordinary Provisions, &c. (1)

Variations where the Strict Limitations are not made by the Will, but directed to be made by Trustees after the Testator's Death.

WILLS.

*Strict
Limitations.
(Full Form.)*

IN THE NAME OF GOD, AMEN. I (*the testator*) of, &c. Do make this my last and only will and testament in manner following, (that is to say) I give and devise the mansion-house at , with the park, lands, and grounds thereunto adjoining or belonging; and also all and every the household and other furniture (2), pictures, busts,

Additional provisions, &c.

(1) See also the marginal notes, variations, and riders at the end of the precedents of MARRIAGE SETTLEMENTS, (*ante*, p. 281, *et seq.*) any of which may with equal propriety be inserted in a WILL of the like species of property.

Household furniture, &c.

(2) So many questions have arisen as to what things will pass under the words household furniture, wearing apparel, goods, chattels, and effects, when given as specific bequests to the widow or other legatee, that a testator cannot be too particular in explaining his own import of these and similar expressions,

plate, books, and other things whatsoever usually therein, or considered as belonging thereto, (except only cash, bank notes, or securities for money (1),) and also the gold watch which was presented to me by, &c. (2), unto my dear wife , for and during the term of her natural life (3), or so long as she shall continue unmar-

WILLS.

Strict
Limitations.
(Full Form.)

Devise of man-
sion-house and
furniture.
To wife for life.

either by particularising the several articles by name, or by such circumstantial description of their place and kind, that no doubt can be entertained as to the identity of the things meant, more especially as the courts lean very much against specific legacies, on account of their diminishing the general effects of the testator applicable to the payment of debts. See *Innes v. Johnson*, 4 Ves. jun. 568; *Kirby v. Potter*, 4 *ib.* 748; and *vid.* *Howe v. Earl of Dartmouth*, 7 Ves. jun. 137; *Sibley v. Perry*, *ib.* 522.

(1) As it has been holden that the devise of a house, together with the "household goods, and whatever else shall be in it at the time of the testator's death, will include cash, and doubts have been entertained whether bank notes will not also be included; see *Stuart v. Marquis of Bute*, 11 Ves. jun. 662: these things should therefore be expressly excepted if they be not intended to pass to the devisee, *West v. Moore*, 8 East, 339.

Exceptions of
cash.

(2) It is common for testators to express their kindness to particular friends by bequeathing to them emphatically "my best gold watch," or the like; but such a vague description would endanger the gift for uncertainty: unless therefore the subject of the bequest be specifically described, it should be left at the choice of the legatee, or the selection of the executors; and see *Peck v. Halsey*, 2 P. Wms. 387.

Best watch, &c.

(3) Household furniture and other goods, &c. may be bequeathed to one for life, with remainder over to others, *Vachel v. Vachel*, 1 Ch. Ca. 130; *Hyde v. Parratt*, 1 P. Wms. 1; and see *Cadogan v. Kennet*, Cowp. 432; *Marshall v. Blew*, 2 Atk. 217; *Hoare v. Parker*, 2 Durnf. and E. 376; and *post*, p. 732, n. (3). And such a bequest entitles the legatee to use them any where, or even let them out to hire, *Marshall v. Blew*, *supra*; formerly, however, the legatee was required to give security

Furniture for
life.

WILLS.

 Strict
 Limitations.
 (Full Form.)

Inventory to
be taken of
furniture.

Devise of free-
hold and copy-
hold lands to
trustees, for
99 years.

ried(1); and I hereby direct, that as soon as conveniently may be after my decease, an inventory shall be taken by my executors hereafter named of all and singular the furniture, pictures, busts, plate, books, and other articles which shall then be therein, or belonging thereto, and signed by them my said executors and my said wife, and one copy of the same be retained by them my executors, and one other copy thereof be delivered to my said wife. AND I give and devise all my freehold and copyhold (2) messuages, lands, tenements, and heredi-

for their forthcoming to the remainder-man, *Blacker v. Bentley*, 1 Ch. Rep. 110; but now it only requires an inventory to be made of them, *Foley v. Burnell*, 1 Br. C. C. 279; *Locke v. Barnett*, 2 Atk. 430; *Bell v. Kynaston*, 2 *ibid.* 82; and if any be worn out in use the tenant for life is not answerable, but if it be sold as useless he must account for the produce, *Hayle v. Burrodale*, 1 Eq. Ca. ab. 361, pl. 8; and such inventory must be deposited with the Master for the benefit of all parties, *Bell v. Kynaston*, 2 Atk. 82. But this is only where the property is bequeathed specifically, as in other cases the rule is that personal property bequeathed to one for life with remainders over shall be invested in the 3 per cent. consolidated annuities; *Howe v. Dartmouth*, 7 Ves. 137.

But a bequest of personal property to one for life, and to his children at twenty-one, and in default of children attaining that age, then over, the remainder over would be too remote, *Cambridge v. Rous*, 8 Ves. 24; *Stanning v. Style*, 3 P. Wms. 336; and see *Barlow v. Salter*, 17 Ves. 479, and *post*, p. 732, n. (3).

Wife till second
marriage.

(1) Confining a devise to the wife during her widowhood, or until her second marriage, is good; *Jordan v. Hukham*, Amb. 209; *vide* also *Ridley v. Wilson*, *ib.* 73; and *Burleton v. Humphrey*, *ib.* 259; *Northcote v. Duke*, *ib.* 510.

Description of
devised estates.

(2) It has been holden that where the will of a devisor happens not to be attested in the manner required by the statute of frauds for the devise of estates of inheritance, and the devise be of the testator's messuages, lands, and hereditaments, gen-

taments, situate, lying, and being at in the
 parish of in the county of [the copy-
 hold whereof I have surrendered to the use of
 my will (1)] unto (*trustees*) of, &c. and their
 heirs (2), to the uses, upon the trusts, and for the

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 Strict
 Limitations.
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rally, without specifying whether they be freehold or otherwise, &c. even those of which the devise does not require such an attestation will not pass; it is therefore proper expressly to mention the several kinds of estates separately. See *Rose v. Bartlett*, Cro. Car. 293; *Addis v. Clement*, 2 P. Wms. 458; *Knotsford v. Gardiner*, 2 Atk. 450; *Chapman v. Hart*, 1 Ves. 271.

(1) Copyholds not being within the statute of wills, which extends only to lands holden in socage or free tenure, would not until the 55 Geo. III. c. 92, pass by the will of the owner, unless they had been previously to the testator's death surrendered to the use of his will; but by that act, sec. 1, it is declared that devises of copyholds made by persons dying after the passing that act shall be valid, although not previously surrendered to use of the testator's will: the words within brackets may now, therefore, be omitted.

Copyholds.

But if the testator be himself a devisee of the copyholds, he cannot devise them unless he be admitted; *Wainwright v. Elwell*, 1 Madd. 627.

(2) At the common law a testator might, by devising his estates from his heir, defeat his specialty creditors of their security upon his real property, as the heir was bound only in respect of assets descended to him from his ancestor; but by 3 and 4 Wil. and Mar. c. 14, s. 2, "all wills and testaments, limitations, dispositions, and appointments, of or concerning any manors, messuages, lands, tenements, and hereditaments, or of any rent, profit, term, or charge, out of the same," are declared to be void as against any such creditor or creditors, who are thereby (s. 3) authorised to bring actions of debt upon their bonds and specialties against the heirs of the obligor and his devisee jointly, which persons shall (s. 5) be liable thereto, notwithstanding any alienation of the said lands and hereditaments, before actions brought, except that by sec. 4, of the same act, any limitation, appointment, devise, or disposition of any manors,

Lands liable to
testator's debts.

WILLS.

 Strict
 Limitations.
 (Full Form.)

ends, intents, and purposes, and under and subject to the powers, provisos, conditions, and limitations hereinafter expressed concerning the same, (that is to say) as to and concerning such of the said messuages, lands, tenements, and hereditaments, as are of a freehold nature or tenure, to

messuages, lands, tenements, or hereditaments, for the raising or paying of debts, or for portions or sums of money for any child, of any person (other than the heir at law) in pursuance of any marriage contract entered into in writing before marriage shall be good, and the same shall be holden by every such person for whom the said limitation, &c. shall be made, and his or her heirs, executors, administrators, assigns, or trustees, until such debts, &c. shall be raised and paid. And see as to the construction of this act, *Ridout v. E. of Plymouth*, 2 Atk. 104; *Golt v. Atkinson*, Willes, 524; *Plunkett v. Penson*, 2 Atk. 292; *Wilson v. Knubley*, 7 East, 128.

Upon which it may also be observed that the personal estate cannot be exempted from payment of the debts of the testator, unless by express devise of the real estate for payment of them in discharge of the personalty, or other plain and unequivocal declaration or manifestation of such intention, see *Tower v. Rous*, 18 Ves. 132; and *Stephenson v. Heathcote*, 1 Eden, 38 and 46, note. Nor can the heir be disinherited unless by an actual devise from him, or other express words or necessary implication, 2 Dow. 210. 218; *Kellett v. Kellett*, *ib.* 248. 254; (see the popular notion that the bequest of a shilling to him is necessary for that purpose refuted, *Rancliffe v. Parkyns*, 6 *ib.* 184); and the following is the mode in which the assets of the testator are to be applied: 1st. His personal estate, unless exempted expressly, or by plain implication, (as by being specifically bequeathed). 2d. Estates devised (not merely charged) for payment of debts. 3d. Estates descending to the heir. 4th. Estates charged generally with payment of debts. 5th. And lastly, estates devised specifically; *vid.* *Gray v. Minnethorp*, 3 Ves. 103; *Burton v. Knowlton*, *ib.* 107; *Brummel v. Prothero*, *ib.* 111; *Manning v. Spooner*, *ib.* 117; *Downe v. Lewis*, 2 Brow. Ch. Ca. 257; *Harwood v. Oglander*, 8 Ves. 125.

the use of (*trustees for wife's jointure*) of, &c. their executors, administrators, and assigns, for and during the term of ninety-nine years, to commence and be computed from the day of my decease, without impeachment of waste, UPON TRUST that they the said (*same trustees*) and the survivor of them, and the executors and administrators of the survivor, and their and his assigns, shall and do, out of or by means of the rents, issues, and profits of the said hereditaments and premises, (subject to and after payment of the expense of repairing, draining, and improving the same, and insuring the messuages and buildings thereon from loss or damage by fire in the full value thereof, and paying and discharging all taxes, assessments, and other outgoings in respect thereof, and of carrying into execution the trusts and powers hereinafter created or given of enclosing, draining, fencing, planting, and improving my estates, and of admittances to copyholds, and a proper salary or other allowance to a steward or other person to oversee and manage or receive the rents of my estates), or by mortgage, sale, or other disposition thereof, or of a competent part thereof, in the opinion of the said trustees or trustee, for all or any part of the said term, or by bringing actions against the tenants or occupiers of the said premises, or by making entries thereupon, or by any other ways or means which they or he shall think fit, levy and raise during the term of the natural life of my said wife (if she shall so long continue my widow) an annuity

WILLS.

*Strict
Limitations.
(Full Form.)*

Upon trust to
secure annuity
to testator's
wife.

WILLS.

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Limitations.
(Full Form.)*

Power of dis-
tress.

or clear yearly sum of £ of lawful money of the United Kingdom of Great Britain and Ireland, of English value and currency, clear of all deductions whatsoever, whether for or on account of the charges or expenses attending the levying or raising the same, or any income or property tax, or any other tax, duty, matter, or thing whatsoever; and pay the same annuity or yearly sum unto her my said wife, her appointees or assigns, for her and their own proper use and benefit, by equal quarterly payments on the 5th day of January, the 5th day of April, the 5th day of July, and the 10th day of October, in every year, and a due proportion thereof, from such of the said days as shall happen next preceding her death up to the day of her decease; the first payment of the said annuity or yearly sum to be made on such of the said days or times of payment as shall happen next after my decease (1). AND to and for this

To wife inde-
pendently of
future husband.

(1) If it be the wish of the testator that the provision made for his wife should be received, notwithstanding any future marriage, but independently of her husband, say,

“ And do and shall pay the said annuity or yearly sum of £ unto such person or persons, and to and for such intents and purposes, and in such manner and form as she my said wife shall from time to time, notwithstanding any her future marriage or coverture, by any note in writing under her hand direct or appoint; and in default of and until such direction or appointment shall be made, do and shall pay the same or so much thereof concerning which no such direction or appointment shall be made or take effect, into the proper hands of her my said wife for

further use, intent, and purpose, that in case any quarterly payment of the said annuity or sum of £ or any part thereof shall at any time be in arrear and unpaid by the space of twenty-one days next after any of the said days hereby appointed for payment thereof, then and in such case, and as often as the same shall happen, it shall be lawful for my said wife, her appointees or assigns, into and upon the several messuages, hereditaments, and premises comprised in the said term, or any of them, or any part thereof, to enter and distrain for the same, and the distress or distresses then and there found to detain and keep, until all such arrears, and all costs, charges, damages, and expenses attending the taking and keeping such distress or distresses shall have been fully paid and satisfied, and in default of

WILLS.

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Limitations.
(Full Form.)*

her own sole and separate use and benefit; so, and in such wise, and to the intent that the said annuity or yearly sum, or any part thereof, may not be subject or liable to the control, direction, or interference, or the debts or engagements of any future or after taken husband, but may be absolutely at her own separate and exclusive disposal, in the same or like manner as if she were sole and unmarried; and I do hereby will and declare that the receipt or receipts of my said wife, or of any person or persons to whom she shall direct or appoint the said annuity or yearly sum, or any part thereof, to be paid, shall, notwithstanding any her then coverture, be a sufficient and full discharge for so much thereof as shall in such receipt or receipts be acknowledged or expressed to be received."

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Limitations.
(Full Form.)*

Power of entry
in case of de-
fault for sixty
days.

payment thereof, or of any part thereof, in due time after such distress or distresses shall be so taken, to appraise, sell, and dispose thereof, or otherwise act therein, according to law, in like manner as in cases of distress made or taken for arrears of rent reserved upon leases for years; such entry when made to be without impeachment of waste, and to be good and valid, although there shall not be any, or not a sufficient distress upon the premises where the same shall be made. AND to and for this further use, intent, and purpose, that if any such quarterly payment of the said annuity or yearly sum of £ or any part thereof, shall be in arrear and unpaid by the space of sixty days next after any of the said days or times of payment (the same being first lawfully demanded) then and from thenceforth, and so often, it shall be lawful for my said wife, and her appointees or assigns, to enter into and upon the said hereditaments and premises, or into any part thereof, in the name of the whole, and to have, hold, occupy, possess, and enjoy the same, and receive, take, and retain the rents, issues, and profits thereof, to and for her and their own proper use and benefit, until she or they shall thereby or otherwise be fully paid and satisfied all arrears of the said annuity or yearly sum, whether the same were due at the time of such entry or respective entries, or became due during the time of her or their possession under or by virtue of such entry or entries, together with all costs, charges, da-

gages, and expenses which shall or may be occasioned by the recovery, or non-payment thereof, or of any part thereof; such possession when taken to be without impeachment of waste (1).

PROVIDED ALWAYS, and I do hereby declare it to be my will, that the said annuity or yearly rent-charge of £ , so hereby bequeathed to my said wife for her life as aforesaid, shall and is by me intended to be in stead and lieu of [or, (if such be the testator's intention) in increase and aug-

WILLS.

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Limitations.
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Wife's annuity
to be in lieu of
her marriage
jointure.

(1) If such be the intention of the testator there may be added,

Liberty for
wife to occupy
house, &c. for
life.

“ AND I do hereby order and direct that my said wife shall have the use and enjoyment of my messuage or dwelling-house situated at and of the household goods and furniture in and about the same, and of the coach-house, stables, and other appurtenances thereunto belonging, for the term of her life, or for so long a time as she shall continue my widow, at the clear yearly rent of £ if she shall choose to accept and reside in the same at such rent, the same to be paid to my trustees by equal quarterly payments on the days or times hereinbefore appointed for payment of the said annuity or yearly sum of £ .

AND subject to the option or liberty hereby given to my said wife to live in my said house at upon the terms aforesaid, I give and devise the same, together with the household goods, furniture and appurtenances unto the said (trustees) their heirs, executors, administrators, and assigns respectively; UPON the trusts, and to and for the ends, intents, and purposes following, (that is to say) IN TRUST that they my said trustees or the survivor of them, or the heirs, executors, or administrators of the survivor, and

Devise after
death of wife
to trustees upon
trust to sell.

WILLS.

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mentation of] her jointure (1) of £ per annum, settled upon her on her marriage, and secured by way of rent-charge upon a part of

their or his assigns, do and shall, as soon as conveniently may be, in case my said wife shall not within the space of one calendar month next after my decease elect to rent and reside in the said house upon the terms aforesaid, or in case my said wife shall within the time last aforesaid accept of and reside in the same, then as soon as conveniently may be after her decease or second marriage, or declining or discontinuing to rent and reside in the same, which ever shall first happen, sell and dispose of the said messuage or dwelling-house with the appurtenances and household goods, and the furniture in and belonging thereto, in such manner and for such price and prices as they or he shall think reasonable and sufficient, and receive and give receipts for the money for which the same shall respectively be sold; and I do hereby declare that such receipts of them my said trustees or the survivor of them, or other the acting trustees or only acting trustee for the purposes aforesaid, under or by virtue of this my will, shall fully exonerate and exempt all and every the purchaser or purchasers thereof, from being in any way or manner answerable or responsible for the due application of the purchase money, or being otherwise concerned to see to the application of the same or any part thereof."

Dower.

(1) At law, a provision made for the wife by will is in no case a satisfaction of her dower, nor will it be so in equity unless it be expressly declared, or strongly implied by the will; see *French v. Davis*, 9 Ves. jun. 573; even (according to some authorities) although the provision be a rent-charge issuing out of the same lands of which she is dowable; see *ibid.* and *Foster v. Cook*, 3 Brow. Ch. Ca. 347; where, therefore, such is the intention of the testator, it should be distinctly so declared by the will; and see *Thompson v. Nelson*, 1 Cox, 447.

the hereditaments and premises hereby devised to the said (*trustees*) upon the trusts hereinbefore mentioned (1), [and also in lieu and satisfaction of all dower and thirds at the common law, or otherwise, which she would or might have been entitled to in default of this my will, or any such jointure as aforesaid;] and I do hereby declare, that from and immediately after the decease or second marriage of my wife, and payment of all arrears which shall be then due of the said annuity or yearly sum of , together with all costs, charges, and expenses attending the execution of the trusts hereinbefore declared respecting the same, the said term of ninety-nine years, or so much thereof as shall not have been disposed of for the purposes aforesaid, shall cease, determine, and be absolutely void to all intents and purposes whatsoever, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding, but subject nevertheless and without prejudice to any sale, mortgage, or other disposition which shall have been made of any part of the said premises, comprised in the said term, in pursuance of the trusts hereinbefore declared concerning the same. AND from and after the end, expiration, or other sooner determination of the said term of ninety-nine years (2), and also in

WILLS.

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Limitations.
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Devise of said
freehold and
copyhold pre-
mises (subject to
said term).

(1) If it is to be exclusive of her jointure or dower, see *ante*, Jointure.
p. 489, n. (1).

(2) Here may be inserted a limitation to trustees for a long Portions for
children.

WILLS.**Strict
Limitations.
(Full Form.)**

To testator's
eldest son for
life.

the meantime, and during the continuance of the said term, subject only thereto, and to the trusts thereof. To THE USE of my eldest son (1) and his assigns (2), for and during the term of his

term for raising portions for younger children, in which case say,

“To the use of (*trustees for raising portions*) their executors, administrators, and assigns, for and during the term of 1000 years, upon the trusts, and for the intents and purposes hereinafter declared concerning the same; and from and after the determination of the said term of 1000 years, and also in the meantime and during the continuance of the said term subject only thereto and to the trusts thereof, To THE USE of my eldest son,” *as above*.

Son for a term
of years.

(1) Where the testator is desirous of continuing the devised estate as long in the family as possible, instead of limiting it in use to his eldest son for life, with remainder to his children in tail, remainder to his second, third, and other sons, as above, the limitation may be to the use of the eldest son for a term of ninety-nine years, if he shall so long live, to be computed from the day of the testator's death, remainder to trustees to preserve contingent remainders, remainder after the death of such son to his first and other sons in tail, with remainder to the other sons and daughters of the testator successively in like manner, in which case, as the testator's children take a term or chattel interest only, and not a freehold, as they would if the estate was limited to them immediately for life, they cannot, even with the concurrence of the heir when of age, make a tenant to the præcipe for suffering a recovery to bar the posterior entail.

Testator no
child living.

(2) If the testator have no son living at the time of making his will, he may devise his estate

“To the first son of my body begotten or to be begotten, if he shall be living at the time of my death, or born in due time thereafter.”

Strict settlement
to be made.

If the testator do not intend to devise the estate under strict limitations, but to direct the same to be done by his trustees,

natural life (1), without impeachment of waste, other than destructive and malicious waste by him

WILLS.

*Strict
Limitations.
(Full Form.)*

after devising the estate to the trustees, upon the trusts after mentioned (*as above*), say,

“ Upon trust, that they the said (*trustees*) or the survivor of them, or the heirs, executors, or administrators of the survivor, do and shall, with all convenient speed after my decease, by such good and sufficient assurances as counsel in the law shall advise, convey, limit, settle, and assure the said hereditaments so devised to them as aforesaid, unto (*other trustees*) of, &c. and their heirs and assigns, To THE USE,” &c. (*as ante*, p. 263).

(1) If from the unsettled disposition of a son the father is desirous of preventing his anticipating the enjoyment of the life-estate limited to him, the limitation may be to trustees in trust for him until he shall attempt to incumber, &c. as,

To son till he
alien or in-
cumber.

“ To THE USE of the said (*trustees*) and their heirs, IN TRUST that they the said (*trustees*) and the survivor of them, and the heirs of the survivor, and their or his assigns, or other the trustees or trustee of the said premises for the time being, do and shall pay the rents, issues, and clear annual proceeds of the said premises, unto my son , or permit and empower him to receive the same for his own use and benefit during the term of his natural life, unless he shall sooner convey or dispose of, or charge or incumber, or agree, or attempt to convey or dispose of, or charge or incumber the same premises, or any part thereof, or the rents, issues, or profits thereof, or do, or agree to do any other act, with a view or intent to vest the same, or any part thereof, in any other person or persons, or to entitle him or them to receive the same ; and then and in any such case, and from and immediately after any such sale, conveyance, charge, or incumbrance, or attempt or endeavour to convey, charge, or encumber the same, IN TRUST that they the said trustees or trustee for the time being do and shall

WILLS.

*Strict
Limitations.
(Full Form.)*

my said son to be committed, and with full power for him my said son (but not for any person or persons claiming from or under him, other than as hereinafter mentioned), to improve, add to, or otherwise alter all or any of the capital or other messuages, lands, parks, plantations, and grounds upon or belonging to my said estates, or any of them, at his free will and pleasure (1).

pay, apply, and dispose of the same rents, issues, and profits in or for the support and maintenance of my said son, and in payment and discharge of the expenses to be by him incurred in or for meat, drink, clothing, house rent, and other necessary and proper disbursements or expenses, but not to pay the same, or any part thereof, to any person or persons to or for whom he may have conveyed, disposed of, or charged, or intended, or attempted, or agreed to convey, dispose of, charge, or incumber the same, or any part thereof, or in or for payment of any other debts, demands, or engagements than such as they or he the said trustees or trustee for the time being shall approve and allow; and subject thereto, IN TRUST for, and to pay the said rents, issues, and profits unto the person or persons who for the time being shall be entitled to the remainder or reversion expectant upon the decease of my said son," &c.

The bankruptcy of the son, however, it may be observed, is not a forfeiture under a clause in a will against alienation; *Wilkinson v. Wilkinson*, Cooper, 259. 2 Ros. 444.

Tenant for life
to have timber.

(1) Where there is an executory devise over, even of the legal estate, and more especially if of a trust or equitable estate, the court will not suffer the timber to be cut unless directed by the testator; *Stansfield v. Habergham*, 10 Ves. jun. 278; and see *Gower v. Byre*, Coop. 160. If, therefore, the testator be desirous that the devisee for life should have power to fell timber, add,

* And with power to fell timber and other trees and

AND I do hereby will and direct that all and every the family and other pictures, and the plate, books, and furniture of, or usually in or about my said mansion-house at shall be considered as in the nature of heir-looms (1), and pass with my said house in the same manner as if they were land or other real property appendant or appurtenant thereto, and shall accordingly continue annexed to my said mansion-house as long as the law will permit, and be inherited or enjoyed by

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Family pictures,
&c. to be heir-
looms.

woods as may be necessary for the repairs of the said estates, and for firing, save only trees for the shelter or ornament of my mansion house at , and to cut and make sale of such timber and other trees and woods as shall be of full and proper growth and standing, (save as aforesaid) but not further or otherwise."

(1) It is common, to prevent disputes between the real and Heir-looms. personal representatives of the testator, to devise heir-looms in express terms; but (when properly such), as deer in a legal park, pigeons in a dove-house, fishes in a pond, and the like, Co. Lit. 8; charters, court-rolls, and muniments of title to the estate, escutcheons, monuments, coats of arms, &c. (Brook, "Chattels," 18), are considered to be part of the inheritance, they will necessarily go with, and cannot be devised from such inheritance; Roll. Ab. 727. But family pictures, library of books, &c. are not properly heir-looms, nor can they be perpetuated as such, but will, like other personal chattels, vest absolutely in the first devisee who shall be entitled to the inheritance, whether in fee or in tail, notwithstanding any direction of the testator to the contrary; see *Foley v. Burnell*, *et al.* 1 Brow. Ch. Ca. 274; *Vaughan v. Burslem*, 3 *ib.* 101; *Carr v. Errol*, 14 Ves. jun. 478; as well as other things which are not of a ponderous nature, as jewels; *Lord Petre v. Keneage*, 1 Raym. 728.

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(Full Form.)****Inventories to
be taken of
heir-looms.****Devise of said
freehold pre-
mises to trustees
to preserve
contingent re-
mainders during
son's life.**

the several persons who shall succeed to my said real estates, under or by virtue of the limitations hereinbefore contained respecting the same, and be subject to the rules of law or equity, applicable thereto; and in nowise pass under or by any bequest of my personal or residuary estate or effects. AND I hereby desire and direct, that proper inventories shall, immediately upon my decease, be made and taken by my last-named trustees, of the said pictures, plate, furniture, and things aforesaid, and signed by them, or such of them as shall act in the execution of this my will, and a true and attested copy thereof be deposited with the writings and title deeds concerning my real estates, for the better information of such of my family as shall from time to time succeed thereto. AND from and after the determination by forfeiture or otherwise, of the estate or interest hereby limited or devised to or for my said eldest son , during his life as aforesaid, THEN TO THE USE of the said (*trustees*) (1) and their heirs, during the

**Trustees to pre-
serve, &c.**

(1) It has been observed in a preceding note, see *ante*, Class VII. No. II. p. 297, n. (1), that in a settlement it is necessary to insert trustees between the life of the parent and the remainders to the children unborn, to preserve such remainders from being destroyed by the tenant for life; this however is not necessary in a will, 1 Sid. 153; "for since by a devise a freehold may pass without corporal tradition or livery of seisin (as it must do if it passes at all), therefore it may commence *in futuro*; because the principal reason why it cannot commence *in futuro* in other cases is the necessity of actual seisin, which always operates in

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natural life of him my said son, in trust to support and preserve the contingent uses and estates hereinafter given or limited from being defeated or destroyed; and for that purpose to make entries and bring actions as occasion shall require, but nevertheless to permit and suffer my said son, and his assigns, [except as hereinafter mentioned] to receive and take the rents and profits of the said manors, messuages, lands, and hereditaments, and every of them, during his life. AND from and immediately after the decease of my said son

, To THE USE of the first son of the body of him my said son lawfully to be begotten, and the heirs male of the body of such son. AND for default of issue (1) male of such first son, To THE USE of the second, third, fourth, fifth, sixth, seventh, and all and every other the son and sons of the body of my said son lawfully to be begotten, severally, successively, and in remainder one after another as they shall be in

Devise on decease of testator's eldest son to his first and other sons in tail male.

presenti. And since it may thus commence *in futuro*, there is no need of a particular estate to support it, the only use of which is to make the remainder, by its unity with the particular estate, a present interest." 2 Blac. Com. 173.

(1) The word "issue" comprehends grandchildren and all other lineal descendants of the parent, unless confined to a narrower sense by the express declaration of the testator: in framing a will, therefore, care must be taken to avoid using this word where the objects of the testator's beneficence are the children only of the devisee; and see *Sibley v. Perry*, 7 Ves. jun. 522; *Leigh v. Norbury*, 13 *ib.* 340.

"Issue."

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Remainder to
their daughters
in tail general.

With cross re-
mainders be-
tween them in
tail.

seniority of age and priority of birth, and the heirs male of the body and bodies of all and every such son and sons, the elder of such sons, and the heirs male of his and their body and bodies being always preferred, and to take before the younger of such sons, and the heirs male of his and their body and bodies. AND in default of issue male of all and every of such son and sons, To THE USE of all and every the daughter and daughters of the body of my said son lawfully begotten, or to be begotten, equally to be divided between or amongst them, if more than one, share and share alike, and to take as tenants in common, and not as joint tenants (1), and the heirs of the body and bodies of all and every such daughter and daughters; and in default of lawful issue of any one or more of such daughter or daughters, there being more than one, then as to the part or share of such daughter or daughters who shall have no such issue, To THE USE of the other or remaining daughters, equally to be divided between them, if more than one, share and share alike, and to take as tenants in common, and not as joint tenants,

Tenants in com-
mon.

(1) Joint-tenancy as a provision for children is an inconvenient mode of devise, because during their minorities no use can be made of their portions for their advancement, as the joint-tenancy cannot be severed; *Taggart v. Taggart*, 1 Sch. and Lef. 88; and in all other cases also where the devisees are intended to take beneficially, it is an inconvenient estate—the devise to them should therefore be as tenants in common, and not as joint tenants.

and the heirs of their respective bodies; and in case there shall be but one other or remaining daughter, then as to the part or share of the daughter or daughters so failing of lawful issue, **WILLS.**
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 To THE USE of such only remaining daughter and the heirs of her body; and in case there shall be but one daughter of the body of my said son, then To THE USE of such one or only daughter, and the heirs of her body; and in default of such issue (1), To THE USE of my own right heirs for ever. AND whereas I have contracted with, &c. for the purchase of certain freehold lands and hereditaments situate at , now I do hereby direct and authorise my said (*last mentioned trustees*) or the survivors or survivor of them, to complete the said purchase, if a good title can be made thereto, and do hereby devise the said contract, and all benefit thereof, to them and their heirs, for that purpose; and I do hereby will and direct, that in case the said lands and hereditaments which I have so contracted for as aforesaid shall not eventually be purchased for want of a good title thereto, or

Devise of estates
contracted to be
purchased.

(1) The deviser may here proceed to limit the estate to his second and other sons and their issue, with remainder to his other sons. daughters and their issue, in like manner, if such limitation accord with his wishes, which may be done precisely in the same form of words as the devise in the text to his first son; see also similar limitations, *ante*, Class VII. No. II. p. 311, *et seq.* and notes.

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Power to grant
leases of free-
holds and copy-
holds.

otherwise, then that the said trustees shall, as soon as conveniently may be after my decease, purchase other lands of equal value out of my personal estate, in case my said eldest son shall be living at the time of my decease, or shall have departed this life leaving a son who shall be then living, but if not, then I will and direct that the sum which I have agreed to give for the said lands and hereditaments shall continue and be considered as part of the residue of my personal estate (1). PROVIDED ALSO, and my further will is, that it shall be lawful for my said son, and for all and every other my sons and daughters, and their, his, and her sons and daughters respectively, and their issue, and I do hereby authorise and empower him, her, and them respectively, as and when they shall severally and successively, by virtue of this my will, be entitled in possession to the manors, messuages, lands, and hereditaments hereby devised to them re-

Estates con-
tracted for.

(1) In the devise of estates which the deviser has only contracted to purchase, he should declare whether it be his intent that so much of his personal estate which he has agreed to pay shall, in the event of the purchase not being completed for want of good title being made, be considered as real estate, and another estate purchased in lieu of it, or whether in such case it shall be considered as personalty and fall into the residue, or go to the division in lieu of the estates agreed to be purchased; for want of which, disputes have frequently arisen between the testator's real and personal representatives; and see *Broome v. Monck*, 10 Ves jun. 597.

spectively as aforesaid, or of which they are to receive and take the rents, issues, and profits, when, and as they shall respectively attain the age of twenty-one years, (although he, she, or they may be entitled to an estate for his, her, or their life or respective lives only), and likewise for the said (*same trustees*) and the survivors and survivor of them, and the heirs of such survivor, and their and his assigns, during the minority of any son, daughter, or issue, who for the time being shall be so entitled, by indenture or indentures to be sealed and delivered by him, her, or them respectively, in the presence of, and attested by two or more credible witnesses, to demise, lease, or grant, or limit or appoint by way of demise, lease, or grant, such part of the said manors, messuages, lands, and hereditaments, as at my decease shall be holden under or by virtue of any lease or leases for life or lives, or for any number or term of years determinable with any life or lives; unto any responsible person or persons, either in possession or reversion, for one, two, or three life or lives in being; and also to demise, lease, or grant, or limit or appoint by way of demise, lease or grant, all or any of the same manors, messuages, lands, and hereditaments, other than and except my said capital mansion-house at , and the parks, gardens, pleasure grounds, and appurtenances to the same belonging, to any like person or persons, for any term or number of years not exceeding the term of twenty-one years absolutely, to commence and take effect in pos-

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session, or within six months next after the date of such lease, and not otherwise in reversion, or by way of future interest; and so as by every such demise, lease, or grant, to be made for or determinable upon any life or lives, or in reversion, the usual and accustomed rents, heriots, and services be reserved, and made payable during the continuance thereof respectively, to be incident to, and go along with the reversion and remainder of the premises to be therein comprised, expectant upon the determination thereof; and so as by every such demise, lease, or grant to be made for any term or number of years absolutely, there be reserved and made payable during the continuance thereof, (to be incident to and go along with the remainder or reversion as aforesaid), the best and most improved yearly rent that can be obtained or reasonably expected for the premises therein comprised, at the time of the granting or making thereof respectively, without any fine, premium, or foregift, or any other thing in the nature, or in lieu of a fine, premium, or foregift (exceeding the sum of ten shillings), being paid for granting or making the same (1); and so as in all and every the demises, leases, or grants, or limitations or appointments by way of demise, lease, or grant so to be made, (whether for life, years, or otherwise, as aforesaid), there

Fine to be
taken.

(1) Instead of a restriction against a fine or premium being taken, a liberty to take them may be granted, in which case see *ante*, p. 356, n. (2).

be contained a proviso or condition of re-entry, in case the rent or rents thereby respectively reserved be unpaid for the space of twenty-one days next after the same shall have become payable, and so as no lessee therein to be named, his executors, administrators, or assigns, be allowed to commit waste, or be exempted from punishment or forfeiture for committing waste, and so as the several lessees shall and do execute counterparts of such demises or grants (1). PROVIDED ALSO, and my will nevertheless further is, that it shall be lawful for my said son , and for all and every other my sons, who may successively become entitled to the said manor, messuages, lands, and hereditaments, on the decease of my said wife, under or by virtue of the limitations hereinbefore contained, and they are respectively hereby empowered (but subject and without prejudice to the uses and estates hereinbefore given or limited to or for the benefit of my said wife), as and when they shall respectively become entitled thereto in possession, and shall be of the full age of twenty-one years, but not sooner or otherwise, or by surrender, forfeiture, or other

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Power to make
a jointure.

(1) A power to grant building leases may (if such be the intent of the testator) be here inserted, in which case see *ante*, p. 423, Rider (Ff). Building leases.

Or if the lands be situated in a mining county, a power to grant mining leases should be inserted, the form of which will be similar to that in p. 426, rider (G). Mining leases.

If the trustees are to have a power to enfranchise copyholds, see *ante*, p. 433, rider (K). Enfranchisement.

See also other powers, *ante*, p. 428, *et seq.* Other powers.

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act or deed of or by my said wife (1), by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by them respectively, in the presence of, and attested by two or more credible witnesses, to grant, limit, or appoint any rent or annual sum to be issuing and payable out of, or chargeable upon all or any of the same manors, lands, and hereditaments, unto and to the use of, or in trust for any woman which he or they shall respectively marry or take to wife, (and that either before or after any such marriage) for and during the natural life or lives of such woman or women respectively, for or in lieu of her or their jointure or jointures, and in bar of dower, such rent or annual sum to take effect from the respective deaths of my said sons, and to be payable at or upon such days and times, and in such manner as he or they shall respectively think fit, but so as such rent or annual sum do not exceed £ a year tax free, for or

Power to jointure.

(1) Without words expressly excluding the power to jointure until the donee shall be in possession immediately under the limitations of the settlement, he might be considered as enabled, (although some have thought otherwise), with the concurrence of his mother or other tenant for life, (she relinquishing her life-estate in his favour ; see Co. Lit. 185, a. *ib.* 383, b. Perks. s. 190. 1605), to charge the estates with a jointure by anticipation during her life-time, to the prejudice of those in remainder, or the second or third son might be empowered by the like means to jointure to the prejudice of the first son ; the testator should therefore clearly express whether it be his wish, that in the event of either his sons marrying during her life, he should, with the consent of his mother, have this power or not. See opinions of some eminent conveyancers on this point, *post*, rider (B).

in respect of every £ (or the value thereof in freehold or leasehold estates), which my said sons respectively shall have and receive, or become entitled to, as or for the portion or fortune of every such woman or women respectively, and so that the same rent or annual sum do not in any case exceed the sum of £ per annum; and to give and grant to or for such woman or women respectively, and her and their assigns, all proper powers and remedies by distress, entry, and receipt of the rents and profits of the hereditaments chargeable therewith, and otherwise, for recovering the same when in arrear, and for that purpose to grant, limit, and appoint the same hereditaments to any trustee or trustees, for any term or number of years, to commence from the death or respective deaths of such son or sons, and to be determinable upon the death or respective deaths of such woman or respective women, and payment of all arrears of the said rent or annual sum, together with all costs and charges incident to, or occasioned by the receiving or procuring payment of the same, or executing the trusts of the said term, or otherwise, in relation thereto. PROVIDED ALWAYS nevertheless, and it is my further will, that my said estates shall not in any event be chargeable with the payment of more than one such rent or annual sum, to or for any such woman or women respectively, at any one and the same time. PROVIDED ALSO, and it is my further will and desire, that it shall be lawful for my said son, and also for every other of my sons, who for the time

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One jointure
only to be
chargeable at
the same time.

Power to charge
premises with
portions.

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being shall be entitled in possession to my said manors, lands, and hereditaments, under this my will, when of the age of twenty-one years, by any such deed or deeds, or instrument or instruments in writing, to be executed and attested as lastly aforesaid, and to be made upon, or previously to his or their marriage or respective marriages, to charge the same, or any part thereof, with the payment of any sum or sums of money not exceeding £ (1), for the portion or portions of any younger son or younger sons, or any daughter or daughters of such marriage, not for the time being entitled to the said hereditaments, either in possession, or remainder, expectant on the decease of my said son or sons respectively under this my will, with interest for such joint portions respectively, not exceeding £4 for every £100 by the year; and to make the said portion or por-

Maintenance to be in proportion to number of children.

(1) If it be the testator's desire that the sum to be raised should be in proportion to the number of children, add,

“ If there shall be but one such child, for the portion of such child the sum of £ ; if there shall be two such children and no more, and if there shall be more than two children, then not exceeding the sum of £ for the portion of such children; provided always, that in case any such children being more than two shall be reduced to that number, such two children shall not be entitled to have a greater sum than the said sum of £ raised for their portions respectively; and if such children shall be reduced to one only younger child, such one child shall not be entitled to have more than the first mentioned sum of £ for his or her benefit as aforesaid.”

tions payable to such daughters or younger sons respectively, at such age, day, or time, or ages, days, or times, and if more than one, in such shares and proportions, and either to the partial or total exclusion of any one or more of them, and subject to such conditions, restrictions, and limitations over, (the same being to or for the benefit of some one or more of them), as they my said sons respectively shall think fit, and shall by any deed or deeds, instrument or instruments in writing, by him or them signed, sealed, and delivered in the presence of, and attested by two or more credible witnesses, direct, limit, or appoint, with full power and authority for every of my said sons to demise or create any term or terms of years, of or in the said hereditaments, or any part thereof, for the better raising or securing the payment of such portion or portions, and interest, [provided always nevertheless, and the aforesaid is upon condition only that the like or an equal sum of money to that which shall be so charged upon the said hereditaments be settled and secured for the benefit of such younger son or sons, or daughter or daughters, by or out of the portion or portions of the woman or respective women with whom he or they shall so marry (1).]

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(1) If the estate be given to trustees for a term of 1000 years for raising portions, &c. for the testator's younger children, the trusts of such term may be here declared, as in Class VII. No. II. p. 330. Term for raising portions.

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Devise of leasehold premises holden for lives and years to trustees.

Also I give and devise all those messuages or dwelling-houses, situated at _____, in the county of _____, with the lands and appurtenances to the same belonging, or therewith enjoyed, and which I hold on lease for lives (1) under the Dean and Chapter of _____, and also all other the messuages, lands, or hereditaments, which at the time of my decease I shall hold for any term or terms of or for life or lives (2), or for any term or terms of years determinable with any life or lives, or for any renewable estate or estates; and also all those my leasehold messuages, tenements, or dwelling-houses, and the lands and appurtenances thereto belonging, situated at _____, in the county of _____, and all other the leasehold estates which I shall have or be possessed of at the time of my decease (3), unto the said

Estates *per autre vie* devisable.

(1) By 29 Car. II. c. 3, s. 12, it is enacted that any estate *per autre vie* shall be devisable by will in writing, signed by the party devising the same, or by some other person in his presence, and by his express direction; and attested and subscribed in the presence of the devisor by three or more witnesses.

Estates *per autre vie* limitable to heirs.

(2) Estates *per autre vie*, (which include leaseholds during subsisting lives, with covenants for perpetual renewal), are nearly similar to estates in fee, and may be devised either absolutely or for life, with remainder over in tail; *Proctor v. Bp. Bath and Wells*, 2 Hen. Blac. 358. And a devise of such estate absolutely if holden in tail, will, according to some opinions, bar the entail equally with a common law conveyance; see *Doe dem*; *Blake v. Luxton*, 6 Durnf. and E. 292. But this has by others been doubted; see *Campbell v. Sandys*, 1 Sch. and Lef. 295, and should not therefore be relied on.

Leaseholds.

(3) It was formerly holden that a chattel interest could not

(*trustees*) their executors, administrators, and assigns, for and during all the residue and remainder of the several terms for years or lives, which shall be to come and unexpired of or in the same respectively, at the time of my decease, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisos, and directions hereinafter given or expressed concerning the same (that is to say), UPON TRUST, in the first place, that they the said

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Upon trust out
of rents, &c. to
repair and pay
ground-rents.

be limited over after a devise to one for life, because a life-estate being greater than a term for years, a devise for life would necessarily pass the whole term; but such a devise over is now holden to be good by way of executory devise; see Manning's Ca. 8 Co. 95, *Stephens v. Stephens*, Ca. Temp. Talb. 228. And although the term be in contingency only, (as when the testator is not entitled to it till the decease of another), it will be devisable like other possibilities; *Veizy v. Pinwell*, Pollexf. 44. *Kempland v. Courtney*, 2 Freem. 250; and see *Wind v. Jekyl*, 1 P. Wms. 572; *Wright v. Wright*, 1 Ves. 409; but a limitation of chattels or personalty after an indefinite failure of issue is too remote and void; the failure of issue must therefore be confined to the time of the death of the party, or other definite period; *Crooke v. De Vandes*, 9 Ves. jun. 197; *Boehm v. Clarke*, *ib.* 580; and *vid.* *Campbell v. Sandys*, 1 Sch. and Lef. 281; but subject to this rule, chattel or personal property may be limited for any number of lives in being, not exceeding that to which testimony can be applied to determine when the survivor drops; *Thelluson v. Woodford*, 11 Ves. jun. 146. Where, however, leaseholds or personalty are limited by reference to a previous strict settlement of freeholds in the same will, they will, as has been before observed, vest absolutely in the tenant in tail on his birth; *Webb v. Webb*, 1 P. Wms. 132; *Foley v. Burnet*, 1 Brow. Ch. Ca. 274; *Ware v. Polhill*, 11 Ves. jun. 257; and see *ante*, Class VII. No. V. p. 538, n. (+), p. 557, n. (1).

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And renew
leases.

And surrender
for that purpose.

(*trustees*) and survivor of them, and the executors and administrators of such survivor, and their and his assigns, do and shall, by and out of the rents, issues, and profits of the said leasehold premises, from time to time duly pay, satisfy, and perform the several rents, covenants, and agreements, which in the subsisting leases, or any future leases to be taken of the said premises respectively, are or shall be reserved or contained, on the tenant or lessee's part, or his or their executors and administrators to be paid, performed, or observed; and also do and shall, by and out of the rents, issues, and profits of the same premises, or by and out of other my personal estate, or by such other ways and means as they or he shall think best, raise such sum and sums of money as shall be sufficient to pay the fines and expenses of renewing the leases of such premises as are or shall be holden for, or determinable with any life or lives, or for any renewable estate or interest, when, and as often as there shall be occasion, or they or he shall consider it advisable so to do; and do and shall, from time to time, renew the said several leases accordingly, and for that purpose surrender and yield up the then subsisting lease or leases of the said premises, and the terms, estates, and interests then to come therein respectively, and do and perform all such other acts and things as shall be requisite or expedient for effectuating such renewals, and vesting the terms, estates, and interests, in or by such new leases to be granted,

in them the said trustees or trustee, their executors, administrators, and assigns, upon and for the same trusts, intents, and purposes, as in this my will are limited or directed, relative to or concerning the present subsisting leases and premises therein mentioned; AND UPON FURTHER TRUST that they the said (*trustees*) and the survivor of them, and the executors, administrators, and assigns of such survivor, and their and his assigns, do and shall (subject to the trusts hereinbefore declared concerning the same) stand and be possessed of all and singular the said leasehold premises respectively, whether holden for any life or lives, or for any term or terms of years determinable with any life or lives, or for any term or terms of years absolutely, IN TRUST to permit and suffer my said son, and his assigns, to receive and take the rents, issues, and profits of the said premises for and during the term of his natural life, if my estate and interest of or in the said premises respectively shall so long continue; and from and after his decease, IN TRUST to permit such person or persons as shall be the heir or heirs of the body of my said son lawfully begotten, or to be begotten, and the heirs, executors, administrators, and assigns of such heirs, to receive and take the rents, issues, and profits of the same leasehold premises respectively, during the remainder of the several estates and interests therein respectively then to come; and in case there shall be no such person

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Further trusts
to sons for life.

Remainder to
the heirs of their
body.

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Remainder to nephew.	
Remainder to person entitled to the freeholds.	

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rents issues, and profits thereof be received, retained and enjoyed by the person or persons, who for the time being shall be so entitled to any estate of freehold in my said manors, messuages, lands, and hereditaments in the said county of _____,

and so limited in use to my said son _____ as

aforesaid; and with, under, and subject to such powers, provisos, restrictions, limitations, and directions as will best and nearest correspond with

Under same limitations as freeholds, or as nearly as may be.

the powers, provisos, conditions, restrictions, limitations and directions hereinbefore expressed or given concerning my said freehold hereditaments, or as nearly thereto as the rules of law and equity will permit (other than and except the said term of _____ years created in the said hereditaments)

but so nevertheless that the person or persons taking such leasehold premises under the said limitations, shall not have a vested interest therein until he or she shall attain the age of twenty-one years, (save only with respect to his or her being entitled to the rents, issues, and profits thereof(1),) and shall become seized of the said freehold hereditaments as of an estate of inheritance in fee-simple in possession,* and then and immediately thereupon, or as soon as conveniently can be thereafter, IN TRUST to assign and assure the said leasehold premises with their appurte-

And assign the same accordingly.

(1) A limitation by will of a personal estate after the death of another without lawful issue, is void; *Jeffrey v. Sprigge*, 1 Cox, 62; for a devise over of personalty, if not to take effect until a general failure of issue, is too remote, but otherwise if the time of failure be confined to the time of the testator's death; *Barlow v. Slater*, 17 Ves. 479.

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Power to de-
mise the lease-
holds.

nances unto the person or persons who shall be so seised of, or entitled to such estate of inheritance in the said freehold hereditaments, and to his, her, or their executors, administrators, and assigns, to and for his, her, and their own proper use and benefit. PROVIDED ALWAYS, and it is my will and desire that my said son , and all and every other my said sons and daughters, and their issue, as and when they shall severally and successively be entitled to the said leasehold premises in possession as aforesaid, and also for them the said (*trustees to preserve*) (1) and the survivor of them, and the executors and administrators of such survivor, and their and his assigns, during the minority of such sons and daughters respectively, and their issue, from time to time by indenture or indentures to be sealed and delivered by him, her, or them, in the presence of and attested by two or more credible witnesses, to grant, demise, or lease (2), all or any of the said leasehold

To complete
contracts for
leases.

(1) " PROVIDED, &c. that it shall be lawful for (*tenant for life*) to make, sign, and deliver to any person or persons whomsoever, all and every such lease or leases as at the time of my decease shall or may remain to be granted in pursuance of any articles or agreements entered into by or with any person or persons for letting any part of the said estates for such term of years, and at and under such rents, restrictions, covenants, clauses, and agreements as under or according to such articles and agreements ought to be reserved and contained therein, or the lessee or lessees therein named, executing counterparts thereof."

Power to lease.

(2) As a lease for years granted by a tenant for life would, without a power to demise for a definite period, determine with

premises to any person or persons, for any term or number of years, to commence and take effect in possession, or within the space of six calendar months next after the date of such lease or leases, but not otherwise in reversion or by way of future interest, so as by every such grant, demise, or lease, there be reserved and made payable during the continuance thereof, to be incident to, and go along with the reversion of the said premises, expectant on the determination of such grant, demise, or lease, the best and most improved rent or rents that can be reasonably had and obtained for the same, without any fine, premium, or foregift (exceeding the sum of ten shillings) being received or taken for or in respect of the making of any such grant, demise, or lease (1); and so as none of the grantees or lessees to whom the same shall be made, be by any clause or words therein contained, freed from impeachment of, or made punishable for waste; and so as in every such grant, demise, or lease, there be contained a clause

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his death, such power is proper, in order that the lessor may be able to give such a permanent interest to the lessee as may induce him to husband the land in the best manner; and see *ante*, No. II. p. 352, notes.

And this power to lease when given to a tenant in tail does not prevent his taking an estate tail, by restraining it to an estate for life, but enables him to bind those in remainder without fine or recovery, whereas leases made by virtue of the statute of Hen. VIII. bind the issue only, and not those in remainder; *King v. Melling*, 2 Lev. 58; *Bale v. Coleman*, 1 P. Wms. 144.

(1) If the trustees are to be at liberty to take fines, &c. see *post*, p. 767, B. Lease in reversion, &c.

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(Full Form.)*

Power for trustees to appoint steward, &c.

Powers of sale and exchange.

of re-entry, in case the rent thereby to be reserved shall be behind or unpaid for the space of twenty-one days next after the same shall become due; and so as the grantees or lessees of every such lease do seal and deliver counterparts of the same respectively. AND I do hereby authorise and empower such last mentioned trustees or trustee of this my will for the time being, from time to time to appoint such person or persons as they or he shall think proper, to oversee, manage, and improve all or any of my said estates, and to receive the rents and profits of the same, and attend to the repairs thereof, and also to pay or allow to such person or persons, or to permit him and them to retain for his or their time and services, such sum or sums by way of poundage, salary, or remuneration, as my said trustees or trustee shall deem reasonable. PROVIDED ALWAYS, and it is my further will, and I do hereby declare that it shall be lawful for the said (*trustees to preserve*) and the survivor of them, and the heirs of such survivor, and their and his assigns, and I do authorise and empower them and him when and during such time as my said son , or any other of my said sons, or any of my daughters, who, for the time being, shall be entitled under the limitations hereinbefore contained to the immediate freehold of my estates so devised as aforesaid, shall be under the age of twenty-one years, and for my said son and other my said sons and my said daughters, when and after they respectively shall have attained the age of twenty-

one years, and be so entitled as aforesaid, to sell and dispose of and limit, appoint, and convey all or any of the same messuages, lands, and hereditaments, and the fee-simple and inheritance thereof to any person or persons whomsoever, whether such person or persons be tenant or tenants for life of the same premises or not, either together or in parcels, and either by auction or public sale, or by private contract or agreement, for such price or prices in money or other equivalent, as to them the said trustees or trustee shall seem reasonable, or to limit, appoint, and convey in exchange the said lands, tenements, hereditaments, and premises, or any part or parcel thereof, for or in lieu of any other lands, tenements, or hereditaments, either of freehold or copyhold tenure, of equal value in the judgment or opinion of the said trustees or trustee; and also to make sale and dispose of or convey in exchange, or enfranchise, all or any of the lands and hereditaments so to be purchased or taken in exchange, with full power and authority, upon payment of the money arising by or from any sale or any exchange of the said premises, or any part thereof, to sign and give proper receipts for the same (1); and I do hereby expressly will and

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Purchasers, &c.
not liable to
see money
applied.

(1) If any of the trustees are to be enabled to become purchaser of the estate, should they think fit, add,

Power for
trustees to
purchase.

“ PROVIDED ALWAYS, and I hereby will, order, and direct, that in case any or either of the said (*trustees*) shall be desirous of purchasing all or any part of the said freehold, copyhold, and leasehold estates, then and in such case no-

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declare, that the receipt and receipts of them the said (*trustees to preserve, &c.*) or the survivor of them, or the heirs, executors, or administrators of such survivor, or their or his assigns, or of other the trustees or trustee, or only acting trustees or trustee for the time being of this my will, for preserving the contingent remainders herein limited, shall be a sufficient discharge and sufficient discharges, at all times, and from time to time, to any purchaser or purchasers, or other person or persons whomsoever, for so much money as shall be therein acknowledged or expressed to be received, and that such purchaser or purchasers, or other person or persons, his, her, or their respective heirs, executors, administrators, or assigns, shall not afterwards be required or liable to see to the application of or be answerable for the loss, misapplication, or nonapplication thereof, or of

thing in this my will contained, such as their being appointed trustees or executors thereof, shall operate as a bar to either of them becoming the purchaser of the same, or any part thereof, at a valuation to be made and put thereon by two indifferent persons, one to be chosen by such trustee so purchasing, and the other by the trustees not purchasing, and in case of the disagreement of such two persons, then by a third indifferent person, to be by such two persons chosen. And in case either of the said (*trustees*) shall so purchase as aforesaid, then I do hereby authorise and empower the said trustees not purchasing to convey and assure the same premises unto the said trustee so purchasing, his heirs and assigns, or unto such other person or persons as he or they shall direct; but in case either of the said (*trustees*) shall refuse or decline to purchase as aforesaid, then I do hereby will and direct that the same premises shall be sold and disposed of pursuant to the trusts herein contained."

any part thereof, nor be obliged or required to see that the same, or any part thereof, be laid out or invested in the purchase of other lands, hereditaments, or property, or in the purchase of bank annuities, or in or upon any other funds or securities until some other purchase shall be made in pursuance of the directions hereinafter contained concerning the same ; and that no person or persons who shall take any of the said lands or hereditaments in exchange for other lands or hereditaments, shall be obliged to see that the lands or hereditaments by them or him given or conveyed in exchange, or any of them, are or is conveyed or settled to, for, or upon the uses, trusts, intents, or purposes hereinafter directed concerning the same.

AND I do hereby further will and declare, that when any of the said hereditaments shall be sold for a valuable consideration in money, and a proper receipt shall be given for the purchase-money thereof, and also when any of the said hereditaments shall be disposed of by way of exchange for other hereditaments, and such last mentioned hereditaments shall be conveyed to and vested in them the said (*trustees to preserve, &c.*) and their heirs, or the survivor of them, and his heirs, or their or his assigns, all and every the hereditaments, which shall be so sold or exchanged, shall be and remain from thenceforth for ever freed and absolutely discharged, of and from all and every the uses, trusts, estates, limitations, powers, provisos, and directions in or by this my will expressed or declared concerning the same, and be

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Lands when
sold to be dis-
charged of the
present uses.

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Power of revocation for effecting such sale, &c.

and remain to the only use and behoof of such purchaser or purchasers respectively, or of such person or persons to whom the same shall be respectively conveyed in exchange, and of his, her, and their respective heirs and assigns for ever, or otherwise, as he or she shall or may require (subject only nevertheless to such lease or leases as shall have been made pursuant to the power hereinbefore contained in that behalf, and also to such mortgage or mortgages as shall then have been made by the trustees or trustee for the time being of the said term of 1000 years, and which shall be then subsisting.) AND for the purpose of effecting such sales, exchanges, depositions, and enfranchisements respectively, I do hereby will and declare, that it shall be lawful for them the said (*trustees to preserve, &c.*) or the survivor of them, or the heirs, executors, or administrators of such survivor, and their and his assigns, or other the trustees or trustee for the time being of this my will for preserving contingent remainders, after any such sale, exchange, enfranchisement, or other disposition shall be so made of the said hereditaments, or any of them, by any deed or deeds, or other writing or writings, to be by them or him signed and sealed in the presence of and attested by two or more credible witnesses, to revoke, annul, and make void all or any of the uses or trusts hereby limited or created of or concerning the same, and by the same or any other deed or deeds, or writing or writings to be so executed as aforesaid, to limit, declare, direct, or appoint any such

new or other use or uses, or estate or estates, as shall be deemed necessary or expedient for the completing and perfecting such sales, exchanges, enfranchisements, and dispositions respectively, [and for conveying the hereditaments, which shall be the subject of the same respectively, to the use of the person or persons who shall purchase or take the same in exchange, or agree for such enfranchisement as aforesaid, and of his, her, or their heirs, or to, for, or upon such other use or uses, or estates or interests as such person or persons respectively shall direct or appoint, and also that upon any such exchange as aforesaid, it shall be lawful for the said (*trustees to preserve, &c.*) and the survivor of them, and the heirs, executors, or administrators of the survivor, and their and his heirs and assigns, to receive any sum or sums of money by way of equality of exchange, upon the trusts hereinafter declared.] AND I do hereby further will and direct that when any of the hereditaments hereby devised, shall be sold, disposed of, or exchanged, the sum and sums of money which shall arise by any such sale, exchange, and disposition, shall be paid to the said (*trustees to preserve, &c.*) or the survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee or only acting trustees or trustee for the time being, whose receipt or respective receipts shall be an effectual discharge and effectual discharges for the same, so and in such manner as that the person or persons paying the same, shall in no wise be liable to see to the

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Money to arise
by sale, to be
paid to the
trustees.

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And be laid out
in the purchase
of other lands.

application thereof, or answerable for its misapplication or nonapplication. PROVIDED ALWAYS nevertheless, and I do hereby further will and direct, that all and every the surplus of the monies which shall be received by or upon any such sale or sales, or for equality of exchange, after payment and satisfaction of all costs and expenses attending the execution of the said trust, and of all charges and incumbrances created upon the said hereditaments, by this my will, shall from time to time with all convenient speed, be laid out and invested by them the said (*trustees to preserve, &c.*) or the survivor of them, his heirs, executors, or administrators, or their or his assigns, by or with the consent and approbation of the person or persons who for the time being shall be beneficially entitled thereto, or to the dividends, interest, or proceeds thereof, if of the age of twenty-one years, but if not, then at and by the sole discretion and authority of the trustees or trustee in whom the said trust monies shall be then vested, in the purchase of other lands, tenements, or hereditaments, to be situated somewhere in that part of the United Kingdom of Great Britain and Ireland called England, or in the principality of Wales, and not elsewhere (1), of a clear and in-

Purchase in
a particular
county.

(1) As it has been questioned whether a direction to purchase lands in a particular place will authorise the trustees to purchase elsewhere, if they cannot be purchased in the place directed, see *Oldham v. Hughes*, 2 Atk. 452, the testator should

defeasible estate of inheritance in fee-simple in possession, and in copyhold lands or tenements of inheritance, if any shall be intermixed therewith, (so that the same do not exceed one-fourth in value of the freehold part thereof,) of equal value at the least to the messuages, lands, or hereditaments, which shall be so sold, or given in exchange; to the intent and purpose nevertheless, and I do hereby will and direct that all and every the messuages, lands, tenements, and hereditaments which shall be so purchased, taken in exchange, or enfranchised, shall forthwith be respectively settled, conveyed, and assured, so and in such form and manner as that the same may thenceforth be and remain to such and the same uses, upon such and the same trusts, and for such and the same intents and purposes, and charged and chargeable in such and the same manner, and by, and with, and under such and the same powers of sale, exchange, and enfranchisement, and other powers, provisos, limitations, declarations, and agreements as are hereinbefore declared or expressed concerning the lands and hereditaments which shall be so sold, exchanged, or enfranchised

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Which lands to
be settled to
the same uses.

expressly mention his intention in this respect, either by words of exclusion, as in the text, or,

“ And I do hereby direct that if the same cannot be purchased in the said county of _____, then in such other county or place as they the said trustees or trustee shall judge expedient.”

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And until purchase, the money to be invested on good securities.

respectively, or as nearly thereto as the differences of tenure, the deaths of parties, and other contingencies or events will permit. AND I do hereby further direct, that until the money arising by such sale, or exchange, or enfranchisement as aforesaid, shall be invested in a purchase or purchases in the manner hereinbefore directed, they the said (*trustees to preserve, &c.*) and the survivor of them, or the heirs, executors, or administrators of such survivor, or their or his assigns, or other the acting trustees or trustee for the time being, of this my will, do and shall by and with the consent and approbation of the person or persons who shall be so entitled as hereinbefore is mentioned, if of the age of twenty-one years, but if not, then of or by the sole and proper authority of the said trustees or trustee, place out or invest such money at interest in the public funds, or on government or real securities, by way of mortgage, in that part of the United Kingdom of Great Britain and Ireland called England, or on other good, sufficient, and eligible securities, real or personal, at their discretion (1), and also from time to time, with such consent and approbation, and so testified

Executors cannot lend on personal security.

(1) Executors or trustees cannot lend money on personal security, though words which imply a discretion so to do are used by the testator; *Wilks v. Steward*, Cooper, 6; an express authority should therefore be given to them for this purpose, if so intended, as otherwise they will be answerable for any loss which an exercise of their discretion may occasion; *Adye v. Fenilletean*, 1 Cox, 24; *Holmes v. Drury*, 3 *ib.* 1; and see *post*, p. 753, n. (1); but may upon real securities; and an authority

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as aforesaid, or of their or his own proper authority, as the case shall require, alter, transpose, vary, and change such funds and securities when and as often as it shall be thought fit or expedient; and do and shall pay and apply the dividends, interest, and annual and other proceeds, from time to time to arise from or in respect of the money which shall be so laid out or invested unto such person or persons, and to and for such uses, intents, and purposes, and in such manner as the rents, issues, and profits of the lands, tenements, or hereditaments hereby directed to be purchased therewith, would belong, or be payable to, or applicable under or by virtue of the limitations thereof hereinbefore contained, in case such purchase or purchases had been actually made(1). PROVIDED ALWAYS, and it is further my will, and I do hereby declare and direct a trustee or trustees to be appointed under this present provision, in their, any, or either of their place or places, or who shall succeed to the trusts in them or him reposed as representatives of the last survivor of such trustees, or of any of them, shall depart this life, or be desirous of being discharged from the aforesaid trusts, or shall be about to reside beyond the seas, or shall neglect, or refuse, or become incapable or unfit, in the opinion of the persons for the time being beneficially in-

Power of appointing new trustees.

given by a testator to his trustees to invest money on mortgage includes an authority to give discharge for it on its being repaid; *Wood v. Harman*, 5 Mad. 368.

(1) Here insert bequests of legacies, &c.; see riders, *post.* Legacies, &c.

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interested in the same, or the major part of them, to act in the said trusts, before the same shall be fully executed and performed; then and in that case, and as soon and as often as the same shall happen, it shall be lawful for the person or persons who, for the time being, shall be entitled to the rents and profits, or dividends and interest of the said trust estates, monies, and premises, if such person or persons shall be of the age of years, and if not, then for the lawful guardian or guardians for the time being of such person or persons, and in case there shall be no lawful guardian or guardians of such person or persons, then for the surviving or only acting trustees or trustee for the time being, or the representative or representatives of the last surviving or acting trustee, and I do hereby expressly desire him and them, by any deed or writing, or deeds or writings, under his, her, or their hand and seal, or respective hands and seals, to be attested by two or more credible witnesses, to nominate and appoint any other fit person or persons to supply the place or places of the trustee or trustees respectively who shall so die, desire to be discharged, or be about to reside beyond the seas, or refuse, or neglect, or become incapable or unfit to act as aforesaid; and that immediately upon or after such nomination or appointment, all and every the trust estates, monies, funds, securities, and effects which shall be then vested under or by virtue of this my will, in such trustees or trustee last-mentioned, shall be respectively conveyed, assigned, and transferred,

so and in such manner that the same may vest in such new trustees or trustee, either jointly with the surviving, continuing, or acting trustees or trustee, or in such new trustees solely, as the case may require, and in his or their heirs, executors, and administrators, according to the several natures and qualities of the said estates respectively, upon the trusts, and for the intents and purposes, and with and subject to the powers, conditions, restrictions, and directions hereinbefore declared or expressed concerning the same respectively, or such of them as shall be then subsisting and capable of taking effect. AND I do hereby will and declare, that all and every such new trustees and trustee, and their respective heirs, executors, and administrators, shall and may act and assist in the management and execution of the trusts to which he or they shall be so appointed or succeed in conjunction with the then surviving, continuing, or acting trustees or trustee, if any, and if not, then by himself and themselves only and respectively, as fully and effectually in all respects, and they are respectively hereby accordingly invested with the same powers, privileges, and authorities of consent and discretion, selling, mortgaging, exchanging, and enfranchising, and paying, receiving, calling in, investing, and re-investing, maintenance, education, and advancement, and of giving effectual receipts and discharges, and all other privileges, powers, and authorities whatsoever, as if they had been severally appointed a trustee or trustees by this my will, of or concern-

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New trustees to
have the same
powers as their
predecessors.

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Trustees to be
chargeable with
their own re-
ceipts only.

ing the same estates and premises, and his or their name or names had been originally herein inserted instead of the name or names of the trustee or trustees in or to whose place or stead such new trustees shall respectively be appointed or succeed. PROVIDED ALWAYS, and I do hereby further will and declare, that none of the several trustees hereby nominated and appointed, nor the trustees to be appointed by virtue of the provision last hereinbefore contained, or any or either of them, or the heirs, executors, administrators, or assigns of any or either of them respectively, shall be charged or chargeable with or for any more or other money or monies than the same trustees shall respectively actually receive, or which shall come to their respective hands, notwithstanding he or they shall or may give or sign, or join in giving or signing, any receipt or receipts for the sake of conformity, or for the greater satisfaction only of the person or persons paying the same(1);

Executors liable
for each other.

(1) Where the trustees are not appointed executors, this provision against their responsibility for the receipts of each other, is not absolutely requisite; see *ante*, Class VII. No. II. p. 396, n. (2); but executors who are not made trustees, or where, being trustees also, they act in the character of executors only, each of them will, unless a clause for this purpose be inserted, be answerable for the receipts, &c. of his co-executors, because their joining being in such cases unnecessary, is to be considered a mere voluntary act for which they must abide the legal consequences; see *Fellowes v. Mitchell*, 1 P. Wms. 83; *Churchill v. Hobson*, *ib.* 242; *Hovey v. Blakeman*, 4 Ves. jun. 596; *Chambers v. Minchen*, 7 *ib.* 186. 198; *Webster v. Webster*, 10 *ib.* 93; and *vid.* *Berry v. Usher*, 11 *ib.* 87; *Brice v. Stokes*, *ib.* 324.

and that no one or more of them the said (*trustees*) shall be answerable for the other or others of them, or the heirs, executors, or administrators of the other or others of them, but each and every of them for himself only and respectively, and for his and their own respective heirs, executors, or administrators, and acts, receipts, neglects, and defaults; and that they, or any or either of them, shall not be answerable or accountable for any banker, broker, or other person, with or to whom, or in whose hands any part of the said trust-mones shall or may be intrusted, paid, or deposited for safe custody, or otherwise in the execution of the trusts of this my will, nor for any person or persons acting under or employed by them or him the said trustees or trustee, or any or either of them, in the receipt, payment, management, or disposal of the same trust-mones, or any part thereof, pursuant to the said trusts; and that they, or any or either of them shall not be answerable or accountable for the rise or fall in the price or value of stocks, or the insufficiency or deficiency in title or value of any security or securities (1) in or upon which the said trust-

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And for their
own acts only.

Not answerable
for involuntary
losses.

(1) An executor ought not to permit money of the testator to remain on personal security longer than is absolutely necessary; if, therefore, any loss be sustained by that means, he will be liable, even though the money was lent on the security by the testator himself; *Lawson v. Copeland*, 2 Brow. Ch. Ca. 156; *Powell v. Evans*, 5 Ves. 389; *Eagleton v. Kingston*, 8 *ib.* 466; and see *ante*, p. 748, n. (1).

Loan on per-
sonal security.

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Trustees to
retain their
expenses.

monies, or any part thereof, shall be placed out or invested, nor for any other misfortune, loss, or damage which may happen to the same trust-monies, or any part thereof, or to all or any of the messuages, lands, tenements, hereditaments, or other trust-premises aforesaid, in the execution of the trusts relating thereto, except the same shall happen by or through his or their own respective wilful act, neglect, or default (1), and then and in that case he and they respectively shall, singly and alone, be answerable for such loss or damage as shall arise from such his or their own respective act, neglect, or default. AND also that it shall be lawful for the trustees in this my will named, and all and every future trustees or trustee, to be so appointed as aforesaid, and their respective heirs, executors, and administrators, and he and they are hereby authorised and empowered, by and out of the monies which shall come to their respective hands by virtue of the trusts aforesaid, to deduct, retain, and reimburse himself and themselves re-

Trustees, &c.
not liable for
accidents.

(1) Neither trustees nor executors are answerable for accidental losses happening to the trust estate; *Powell v. Evans*, 5 Ves. jun. 839; although they are both equally liable for such as may occur by their wilful default or negligence; see *Fench v. Hobson*, 9 Ves. jun. 103; and *vid.* Class VII. No. II. p. 397, n. (1).

Provisos for their indemnity are not therefore essential to be inserted, and even where proper, the court will supply them; *Dawson v. Clarke*, 18 Ves. 254.

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spectively, and also to pay or allow to his and their co-trustees or co-trustee all costs, charges, damages, and expenses (including fees to counsel and others for advice), which they, or any or either of them, shall or may pay, sustain, or be put unto, in the execution of the said trusts, or any of them, or in any wise relating thereto; and to settle and allow, or disallow the accounts of any trustees or trustee who shall depart this life, or decline, refuse, or become incapable to act in the said trusts; and also to receive and give discharges (1) for any sum or balance which may be due from such trustees or trustee; [and the person or persons paying the same shall not afterwards be liable to see to the application or be answerable for the misapplication thereof, or of any part thereof;] all which said costs, charges, and expenses shall and may be reckoned, settled, and allowed fully and liberally, as between solicitor and client, and not as between party and party, in any cause or legal proceeding. AND LASTLY, I do hereby name and appoint my said dear wife, jointly with the said (*trustees*) executrix and executors of this my last will and testament, during her widowhood, and in case of and upon her second marriage, then such of my sons as shall then

Appointment of
executors.

(1) As each executor entirely represents his testator, and the acts and possession of one are the acts and possession of all, one alone may sell, &c. without the others; in which they differ from administrators and trustees, whose authority is joint; Hudson v. Hudson, 1 Atk. 460; and see *ante*, p. 396, n. (2).

One executor
may act.

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be of the age of seventeen years or upwards (1), for the purpose of carrying the trusts and directions thereof into execution, but not for taking any beneficial interest in any residuary property which I may die possessed of, otherwise than as is hereinbefore expressly declared (2). AND I hereby give and bequeath to each of them the

Appointment of
 executors not
 necessary in
 will of land.

(1) In a will of lands only, it is not essential that executors should be appointed, nor is any probate of such will in the ecclesiastical court requisite; *Doe dem. Ash v. Calvert*, 2 Campb. 389; the jurisdiction of that court extending to personalty and chattels only; but where they are appointed, they should be of the age of seventeen years at least, as until that age they are incapable of acting.

Residuary property, at law, belongs to executor.

(2) As an executor is at law entitled to the residue of a testator's personal effects after payment of debts and legacies, *Urquhart v. King*, 9 Ves. 229, and this right is not rebutted in equity without some "strong and violent presumption" of a contrary intention of the testator; see *Newstead v. Johnson*, 2 Atk. 45; *Pratt v. Sladow*, 14 Ves. 193; this inference of law should, if so intended, be prevented by expressly giving the residue *aliunde*, or by declaring that the executors shall stand possessed of the residue in trust for the next of kin, or as above in the text; but where executors are also trustees, it is said they are not entitled to the residue; *Read v. Snell*, 2 Atk. 643, *sed quare*; and see *Batteley v. Windle*, 2 Brow. Ch. Ca. 31; and the distinction taken, *Pratt v. Seadden*, 14 Ves. 193.

Legal and equitable assets.

And if devisees in trust for payment of debts are made executors, the subject of the devise becomes legal assets, (*i. e.* distributable, by the rules of law, according to priority); but if they be not executors, the devise is equitable assets (*i. e.* distributable *pari passu*); *Hixon v. Witham*, 1 Ch. Ca. 248; *Anon.* 2 Vern. 406; *Edwards v. Graves*, Hob. 265; *Girling v. Lee*, 1 Vern. 63; a distinction which should therefore be attended to in framing a will, where the circumstances of the deviser require it.

said (*trustees*) the sum of £ . , for their trouble in the execution of this my will (1). [AND I do hereby revoke (2) all and every other

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(1) As executors are not entitled to any allowance for their trouble in executing the will, *Webb v. Shaftsbury*, 7 Ves. 481, it is reasonable that some bequest should be made them. And where such legacy be given to him, and it is not intended that he should have the residue of the testator's estate (which by law will belong to him, see above, n. (2)), it should be expressly mentioned to be given him for his care and trouble in the execution of the will, which will in equity control the rule of law, and make him a trustee of the residue for the next of kin of the testator; see *Rackfield v. Careless*, 2 P. Wms. 158; *White v. Evans*, 4 Ves. 21; for if it be given generally without being expressed to be for his care, &c. it will not exclude him without other circumstances; *Langham v. Sanford*, 17 Ves. 435. 443.

And it may here be noticed that legacies given to executors for care and trouble are not payable if they decline to act; *Fremman v. Fairlee*, 3 Mer. 31.

(2) By the stat. 29 Car. II. c. 3, s. 6, it is enacted that no devise in writing of lands, tenements, or hereditaments, nor any clause thereof, shall be revocable otherwise than by some other will or codicil in writing revoking the same, signed in the presence of three or four witnesses. But a will being in its nature imperfect, and ambulatory as it were, until the decease of the testator, it is always revocable at the pleasure of the deviser, provided the ceremonies required by the statute are pursued; see *Hatcher v. Curtis*, 2 Freem. 61; *D. Marlborough v. Lord Godolphin*, 2 Ves. 61. 610; *Reid v. Shergold*, 10 Ves. jun. 370; except only, it has been said, where the devise is made as a security for a debt or other *bonâ fide* obligation; *sed quære*.

Revocation of
wills.

And the making of a latter will, is of itself a revocation of a prior will, this express revocation, usually inserted, of all former wills, is therefore unnecessary.

And a will made in the execution of a power will be revocable without the reservation of a power for that purpose, which, therefore, is not requisite where such execution is by will.

As to appointing a guardian of children; see *post*, p. 808.

Guardian.

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Witness.

will and wills, and codicil and codicils by me at any time heretofore made, and declare this to be my last and only subsisting will and testament. IN WITNESS whereof, I have to each sheet {or skin} of this my will, contained in sheets of paper {or skins of parchment,} subscribed my name, and to this last sheet {or skin} my seal also, this day of , in the year of our Lord .

Attestation.

SIGNED, sealed, published, and declared by the said (*testator*) as and for his last will and testament, in the presence of us, who, at his request, and in his presence, and in the presence of each other, have hereunto set our names as witnesses (1).

A. B. }
C. D. } *three witnesses.*
E. F. }

Execution, &c.

(1) With respect to the form of the execution and attestation of a will, see INTRODUCTION, *ante*, (after p. 696.)

Other bequests, &c.

. See various other devises, bequests, &c. *post*, p. 767, *et seq.* and INDEX, *voc.* DEVISE, BEQUEST, LEGACIES.

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(A.) Opinions of Counsel on the Surrender of an Estate for Life to a Reversioner, in order to enable him as in Possession, to jointure a Wife.

A. B. by his will devised his estate (subject to a sum of money charged thereon for the benefit of his wife) to trustees and their heirs.

To the use of his said wife and her assigns for life, and after her decease to the use of his eldest son , and his assigns, for his life, sans waste; remainder.

To trustees to preserve contingent estates; remainder.

To the first and other sons of his said son , in tail male, with remainder over in like manner to other sons of the testator, and their first and other sons.

And in the said will was contained the following proviso:

“ PROVIDED ALWAYS, and I do hereby declare my will to be, that it shall and may be lawful to and for my said sons, &c. when and as they shall respectively be in the actual possession of the said manors, &c. by virtue of the limitations aforesaid, by any deed or deeds, writings or writing under their respective hands and seals, to limit or appoint to or to the use of any woman or women that shall be their respective wife or wives, for the life or lives of such woman or women, for her or their respective jointure or jointures, such part or parts of my said lands, &c. in the county of , as they shall think fit, so as such parts so limited do not exceed the yearly sum of £100 for each and every £1000 such woman shall bring as her fortune, to my said sons, or be *bonâ fide* worth in money or lands, and so as such jointure do not exceed the yearly sum of £ .”

The testator's eldest son being about to make a settlement on his intended marriage, and desirous of limiting a jointure in pursuance of the said proviso, his mother, in order to enable him so to do, has agreed to surrender her

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life estate in the devised lands, and as she is entitled to the sum of £ charged on the whole of the testator's estate she further agrees wholly to exonerate that part of the estate which she so surrenders from that sum.

Quære.—Whether this mode will effectually answer the purpose intended, and completely enable , the eldest son, to execute his power of jointuring on his intended marriage; and if not, what other mode can be adopted for the security of his lady?

Opinion of MR. SIDEBOTTOM.

Powers of jointuring and charging are, I apprehend, of the nature of springing or executory uses, to take effect upon particular events or at particular periods, and cannot be executed before the events happen or the periods arrive. In the present case the powers in question arise from (*the son*) being actually in possession by virtue of the antecedent limitations, which I conceive to mean after the determination of his mother's estate for life. It is too much for me to maintain that these words will be satisfied by a conveyance of his mother's life estate merely for the purpose of enabling him to make a jointure, and work a possible prejudice to those in remainder. May it not rather be said that during his mother's life he is in the actual possession under and by virtue of her conveyance, (though, indeed, there would be a merger of the life estate) or were she disposed to convey to a second or third son could that son be said to be in the actual possession under the limitations in the will during the life of an elder brother, so as to make the limitation of a jointure by such second or third son valid if his elder brother should afterwards die without issue. There cannot, however, I think, be any objection to the plan proposed upon the principle of *valent quantum valere potest*, unless it should be said that a defective exe-

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cution of a power destroys the power itself, which is a position I cannot assent to. But, perhaps, if (*the mother*) were to make a demise as proposed, and afterwards make a feoffment or levy a fine to a third person and his heirs for ever, so as to create a forfeiture of her life estate, and an entry for such forfeiture be made by (*the son*) as next in remainder, the powers of jointuring and charging might arise therefrom, because a forfeiture and consequent entry put an end at law to a life estate as effectually as death itself, and after these acts I think (*the son*) might be said to be in the actual possession under the limitations in the will so as to make a jointure, &c. But as I do not recollect ever to have heard that such a proceeding has been advised in any similar case, it would be a satisfaction to me if the parties would not rely entirely upon the inclination of my sentiments.

Linc. Inn, June, 1790.

RADCLIFFE SIDEBOTTOM.

P. S. If (*the wife*) make a demise, and afterwards commit a forfeiture of her life estate, that demise should be to a trustee in trust to pay her the rents and profits during the term.

Opinion of MR. BUTLER.

It is very material in this case that between the life estate devised to (*the wife*) and the life estate devised to her son there is no interposed estate to trustees for preserving contingent remainders; for had there been any such interposed estate it would have prevented her surrendering the estate to her son. By lease and release, or bargain and sale enrolled, or covenant to stand seised, she might have conveyed it to him, and by that means have put him in the actual possession of the lands. But (*the testator's*) will seems to require that at the time his son exercises the power, he should be in the actual possession of the estate by virtue of the limitations of the will. Now in this case he would be

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in the possession of the estate, but he would be in the possession of it not under the limitations of the will, but under a conveyance from (*his mother*) and he would take an estate both in quantity and quality essentially different from that he would take under a surrender; for by taking under a surrender, (*the mother's*) estate would be entirely extinguished, and then if her son died in her lifetime, the next in remainder would be entitled to enter presently; but by taking under any of the conveyances above-mentioned, he would take an estate for the life of (*his mother*) remainder to trustees during her life, to preserve, &c. remainder to himself for life, and then, supposing him to die during (*his mother's*) life, there would be a special occupant during her life, and the next in remainder could not enter till her decease.

It seems, therefore, to be clear, that if there had been any interposed estate to trustees, one of the requisites to a good exercise of the power, viz. (*the son*) being in *by virtue of the limitations*, would have failed; but there being no interposed estate, (*his mother*) may surrender her estate to him, an estate for his own life being of more value to him than an estate for the life of another. See Perk. 590.

In this case he will, I apprehend, be in by virtue of the limitations; for when a preceding estate fails, and the remainder-man enters, he is in as of the estate limited to him; he cannot be in as of any other estate, and as he can be in of that estate by no other mode but under the limitations contained in the original instrument, it follows in that case, that he will be in possession under the limitations contained in his father's will. From this I conclude, that supposing (*the mother*) to surrender her estate to (*her son*) he will be in the actual possession of the estate under the limitations in the will, and capable therefore to exercise his power.

The next thing to consider is, whether the operation of the surrender will be affected by the lease proposed to be made by (*the mother*) to a trustee for a term of years if she shall so long live.

The lease will evidently leave the reversion in her, so that in fact the estate after this will be in the lessee during

the term, and subject thereto in her for her life, remainder to her son for life. The term will, therefore, precede her life estate, and cannot, upon any principle of law, impede the surrender. The case is in substance the same as that put by Perkins: see 1605.

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There he says, "if there be lessee for years, remainder unto a stranger for life, remainder to another in fee, and during the years the remainder for life doth surrender unto him in fee, it is a good surrender."

But the surrender, though it will extinguish the mother's life estate, will not, I conceive, affect the lease previously granted by her; it being a rule that though, having regard to the parties to the surrender, the estate is absolutely drowned, yet, having regard to strangers, the estate surrendered has a continuance, Co. Lit. 338 b.; and, therefore, the charges made by a tenant for a life previously to his surrendering his estate continue good, Co. Lit. 185 d. These observations seem to authorise a conclusion, that the plan in question will effectually answer the objects of the parties.

But it remains to consider whether any inference can be drawn from the will to prevent this conclusion. As to this it must be observed, that there is reason to suppose that what is now proposed to be done presented itself to the testator's mind, and there certainly is no express clause in his will respecting it. Had it been asked him as a general question whether it was his intention that on the event of his son's marrying in her lifetime, and her consenting to his exercising the power in question, he should have a right to exercise it; there is as much reason to suppose he would have answered in the affirmative as there is to suppose he would have answered in the negative. But whatever would have been his directions if he had adverted to the circumstance under consideration, there is no express provision respecting it, and I cannot discover any words sufficiently indicative of an intention to the contrary, to counteract the legal operation of the words he has made use of, or to abridge the known legal incidents, qualities, or consequences of the estate he had created.

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For these reasons I incline to think the exercise of the powers in question in the mode proposed will be good; but I am sensible it is a case of considerable nicety, and there is no case which comes up to it. I cannot, therefore, but feel great diffidence of the opinion I have delivered upon it.

Linc. Inn, June, 1790.

CHARLES BUTLER.

Opinion of MR. MANSFIELD.

I am inclined to think that the intended purpose cannot be accomplished by the mode proposed: it is doubtful whether it could be accomplished by the mother's surrendering the whole estate to her eldest son; but I am inclined to think that it might, although he would not then be in possession of the estate by virtue of the limitations in the will, according to the probable sense in which those words were used by the testator. The most effectual mode that can be adopted to secure a jointure to a lady will be for the mother to surrender the whole estate, for all the sons to concur in making a jointure, and for her to assign her charge in the estate as a collateral security for the jointure; when she has surrendered the whole of the estate, her sons may effectually secure to her as against themselves, and any claim while they can make so much of the estate for her life as she shall think it reasonable for her to retain.

Temple, 1790.

J. MANSFIELD.

Opinion of MR. SCOTT.

I have very great doubt whether the method proposed will secure an effectual jointure to this lady. If a jointure made in this way would be good, it must follow, that if the first, second, and third sons dying one after another without issue, should have jointures made upon their marriage by surrendering part of the premises from time to time in

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the lifetime of the wife, and then the fourth son was to have issue, having by the same means a jointure made on his marriage, and the mother should survive all her four sons, upon her death the issue of the fourth son would succeed to the possession of the estate, but with the jointures of four widows upon it. Now certainly it may at least be very reasonably doubted whether the testator would have said that the sons were in possession, in his sense of the words, by virtue of the limitations in the will, before they came into possession by virtue of them in the regular and natural course; and it is observable that, according to the very terms of the proviso, the person entitled to make a jointure of *part or parts* is such person as is entitled to the actual possession, not of *a part or parts* of the premises, but in the actual possession of the manors, &c. and premises. I do not say that there are not very strong reasons to be stated in support of the opinion that this jointure would be good; but I have so much doubt about it, that I think it would at least be necessary that the whole estate should be surrendered, that the after-takers who are adult, and can confirm the transaction, should join in confirming it. And it is so far with me questionable, whether even the surrender of the whole estate is not anticipating the execution of the power, and exercising it before the testator meant it should be exercised, that I should think it advisable also that the sum of £ , charged on the estate for the mother, should in some measure be made a security to the wife for her jointure; of course the husband would covenant to execute all further assurances upon the death of the mother.

Linc. Inn, June, 1790.

J. SCOTT.

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Proviso that a Devisee shall assume the Name and Arms of the Testator.

Devisee to assume name, &c. of deviser.

“ PROVIDED ALWAYS, and it is my will and desire, and I do hereby direct that all and every the person and persons to or for whose use the manors, messuages, lands, and hereditaments hereinbefore devised or limited in remainder from and after the decease of my said son do and shall and as when and within the space of twelve calendar months next after they shall severally become entitled thereto in possession under or by virtue of this my will; and also that all and every the person or persons whom any of my said daughters, or any issue female of any or either of my said sons or daughters respectively shall marry, if such issue female shall at the time of such marriage be so entitled as aforesaid, then within the space of twelve calendar months next after the solemnization of the said marriage; or if such issue female shall not at the time of her or their marriage or respective marriages be so entitled, then within the like space or period after she or they shall be so entitled, assume and take upon himself and themselves the surname of (they respectively not being of that name) and by such name only and no other thenceforth to style and subscribe themselves respectively in all deeds, instruments, and writings, and on all other occasions, and also do and shall bear and use the arms of my family either alone or together with his or her own family arms, in case his Majesty's royal licence and authority for the taking and assuming the said surname, and bearing and using the said arms can be by any means obtained; and in case any such person or persons shall refuse, decline, or neglect to take, assume, and use such surname and arms respectively, or to endeavour to obtain such licence as aforesaid for that purpose for the space of twelve calendar months after they shall severally become so entitled as aforesaid, (they being respectively of the age of twenty-one years or upwards) then and as often

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as the case shall happen, the estate and interest of him, her, or them, of or in the said manors, messuages, lands, tenements, and hereditaments, shall from and immediately after the expiration of the said space of twelve calendar months cease, determine, and be void to all intents and purposes whatsoever, and every the said manors, messuages, lands, tenements, and hereditaments so devised as aforesaid, shall immediately thereupon go to the person or persons who shall then be next in remainder under or by virtue of the devise or limitation hereinbefore contained, in the same manner as if he, she, or they so refusing, declining, or neglecting as aforesaid, if tenant or tenants for life, was or were actually dead, or if tenant or tenants in tail was or were dead without issue, and then and in such case all and every the same manors, messuages, lands, tenements, and hereditaments shall immediately thereupon go to the person or persons who shall then be next in remainder under or by virtue of the devise or limitation hereinbefore contained respecting the same; but nevertheless without prejudice to any lease or leases which prior to such cessation or determination of the said estate and interest had been granted of any of the said hereditaments in pursuance of the power in that behalf hereinbefore contained. PROVIDED ALWAYS that any such cessation or determination of the estate of any tenant for life shall not operate to destroy or prejudice any of the contingent uses or estates hereinbefore limited in remainder to his or her sons or other issue respectively, or other person or persons to whom such uses or estates are so hereby limited, but that the remainders hereinbefore limited to the said (*trustees*) and their heirs during the lives of such tenants for life shall upon every such cessation or determination, take effect and continue for preserving and giving effect to such contingent uses and estates as they shall respectively arise, and that such trustees and their heirs shall during the suspension or contingency of the use or estate then next in remainder or expectancy, but no longer, receive, pay, and apply the rents and profits of the hereditaments which would have belonged to such tenant for life, if no such cessation or determination had

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taken place, unto such person or persons, and for such intents and purposes, and in such manner as the same would have been payable or applicable under or by virtue of the limitations and powers of this my will in case such tenant for life were then actually dead, but charged and chargeable nevertheless, and subject and without prejudice to any such jointure or jointures, portion or portions, and the term or terms of years, and other remedies for the same respectively, and such lease or leases as the person or persons so neglecting or refusing as aforesaid, shall before such cessation or determination of the estate have directed to be raised or charged upon or out of the said hereditaments or any of them, pursuant to and by virtue of the powers hereinafter for those purposes respectively contained, or any of them."

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(B.) *Power of Leasing where the Trustees are not restrained from taking Premiums, &c.* See ante, p. 739, n. (1).

“AND also upon trust in the meantime, and until the said messuages, lands, and hereditaments shall be sold and disposed of, and as to such of them as shall from time to time remain undisposed of, that they the said trustees and trustee for the time being shall or lawfully may (and he and they are hereby expressly empowered so to do, if they or he shall think fit) demise, or lease, and assure the same, or any part thereof unto or to the use of any person or persons for any term or number of years, or for any life or lives, and either at or without a rent or other sufficient annual or other rent or rents, or at or for any sum or sums of money, by way of foregift or premium, and to take effect either in possession or in reversion, or in any other lawful manner or form whatsoever at their or his discretion.”

Trustees may
lease in rever-
sion, &c.

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Devise of Lands in Trust to be Sold.

Devise of lands
to be sold.

AND as to and concerning my messuages or tenements, with the lands and appurtenances thereunto belonging, situated at I give and devise the same unto (*two other trustees*) their heirs and assigns, upon and for the trusts, intents, and purposes following, that is to say, UPON TRUST, that they the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, or administrators of the survivor, and their and his assigns, do and shall, as soon as conveniently can be after my decease, sell and absolutely dispose of the same, either together or in parcels, and either by public auction or private contract, as they or he shall think best, for such price or prices, or sum or sums of money, as in their or his opinion can be obtained or reasonably expected for the same, (having their title thereto previously investigated by counsel (1), and to convey and assure the premises which shall be so sold, to the purchaser or several purchasers thereof, and their heirs, or otherwise, as he, she, or they shall direct

Trust for sale.

(1) When a testator devises an estate in trust to be sold, he should always have the title previously submitted to counsel, that any defect or doubts may be cleared up ; for otherwise, as the trustees will not covenant for the title, they may have great difficulty in carrying the trusts into execution ; see INTRODUCTION, *ante*, (after p. 696.)

and appoint. AND I do hereby declare that the receipt and receipts of them the said (*trustees*) or of the survivors or survivor of them, or of the heirs, executors, or administrators of such survivor, or their or his assigns or of the other trustees or trustee, or the only acting trustees or trustee of or concerning the said premises for the time being, shall be a good and sufficient discharge for the purchase-money thereof; and that no such purchaser or purchasers, his, her, or their heirs, executors, administrators, or assigns, shall after payment of the same to such trustees or trustee, be in any manner answerable for, or liable to see to the application thereof or any part thereof (1). AND I do hereby further will and direct that the monies to arise from such sale, and also

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Receipts of
trustees to be
good discharge.

The purchase-
money to be
applied in
making good
deficiency of
personal estate.

(1) Where freehold lands are directed by the testator to be sold and the money applied in payment of specified debts, or to supply a deficiency in his personal estate bequeathed for that purpose, or for payment of legacies (except where general and not specific debts are also to be paid thereout), it is material that a declaration should be inserted that the purchasers shall not be bound to see to the application of the consideration money, as they will otherwise in equity be considered as trustees for such creditors, and personally answerable for the debts; see *Wynn v. Williams*, 5 Ves. jun. 130. But where the property consists of leaseholds or other chattel or personal estates, and the trustees for sale are also executors, this is not absolutely requisite, as this species of property vests in the executors by the rules of law in the first instance, notwithstanding a specific bequest of it to others; see *Ewer v. Corbett*, 2 P. Wms. 149; *Whale v. Booth*, cited 4 Durnf. and E. 625; they may, therefore, alone make a valid sale and title to a purchaser; and see *ante*, Class VII. No. II. p. 363, n. (2), p. 375, n. (1).

Purchaser not
to see to appli-
cation of pur-
chase-money.

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in or by the fall of timber in the meantime, (and which my said trustees are hereby directed to make, or cause to be made as and when they shall think fit (1), shall in the first place be applied in making good the deficiency (2), if any, which there may be in my personal estate for the payment of funeral expenses, the probate of this my will, my just debts, such of my said debts as are by simple contract only being first paid and satisfied (3), and the several legacies hereby bequeathed, or which shall be bequeathed by any codicil

Timber.

(1) A direction to trustees to cut trees in aid of the testator's real and personal estate is not a trust, but merely a power, *Gower v. Eyre*, Cooper, 156.

Personalty first
subject to debts.

(2) The personal estate of the testator is the natural fund for payment of debts; and nothing will exonerate from it being first liable but an express declaration or manifest intent to the contrary, and therefore a charge of the debts on the realty, a direction to sell, or the creation of a term for the payment of them has been held not sufficient; *Tower v. Lord Rous*, 18 Ves. 132; and see *Tait v. Lord Northwick*, 4 Ves. jun. 816; *Howe v. Earl of Dartmouth*, 7 *ib.* 149; *Milnes v. Slater*, 8 *ib.* 305; *v. Brickwood*, 9 *ib.* 447; if, therefore, he mean to exonerate such estate, he must expressly declare such to be his intention.

Simple contract
debts to be first
paid.

(3) A direction in a will to pay simple contract creditors before specialty ones, which may sometimes suit the nature and disposition of the testator's property, is within the exception in the statute of fraudulent devises, *Millar v. Horton*, Cooper, 45; and therefore valid.

And so executors may pay a bond debt in preference to a debt on judgment not docketed, *Rickey v. Hayton*, 1 Cop. 313; 6 Durnf. and E. 304, S. C. and *Steele v. Steele*, 1 Bos. and Pul. 307; which are rules of law to be made known to the testator for his guidance in the making of his will.

or codicils hereto, and that the residue thereof, or the whole thereof, in case there shall be no such deficiency in my said personal estate, be invested in the purchase of three per cent. consolidated bank annuities, in the names of them the said (*trustees*), or other trustees or trustee last aforesaid, upon and for such trusts, intents, and purposes, as are hereinafter declared concerning the sum of £ three per cent. consolidated bank annuities, hereinafter bequeathed to them.

AND I do hereby further will and direct that the estates hereby directed to be sold as aforesaid, and the rents and profits thereof, shall, until sale thereof, be taken and considered as part of my personal estate (1), and be applicable and applied in such manner, and for such intents and purposes as the dividends or interest of the money to arise from such sale, would be payable or applicable under this my will, in case such sale had actually taken place, and the purchase-money been paid.

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Until sale the sum to be considered as personalty.

(1) Where the trust for sale is merely to answer the deficiency of the personal estate, such a trust will not be an absolute conversion of the land, but only *pro tanto*, i. e. to the extent the deficiency may require; *Berry v. Usher*, 11 Ves. jun. 87; for per Lord Eldon, it is a clear rule in equity, that when real estate is directed to be converted into personalty for a purpose which fails either wholly or partially, the money will, notwithstanding the conversion, be considered realty, to the extent for which the purpose fails; *Hill v. Cock*, 1 Ves. and Beam. 174; but where land is directed by will to be sold generally, and without regard to a partial or particular object, it is considered as personalty; *Trejowell v. Sydenham*, 3 Dow. 207: hence, if the intent of the testator be otherwise, he should expressly declare it to be so.

Direction for sale a conversion of the property.

executed in the presence of, and attested by two or more credible witnesses, whether she be covert or sole, and notwithstanding any her then coverture, direct or appoint; and in default of, and until any such direction or appointment, do and shall pay the same, or so much thereof, of which none such shall be so made, into the proper hands of her my said daughter, for her sole and only use, benefit, and disposal, during the term of her natural life, so, and in such manner, as that the same, or any part thereof, shall not be subject or liable to the control or interference or the debts or engagements of any person to whom she may happen to be then married, but so and in such manner also, that she my said daughter shall or may not sell, or dispose of, or otherwise receive by anticipation, such dividends, interest, or proceeds, or any part thereof, but only from time to time as and when the same shall arise, and be paid or payable from or out of the stocks, funds, or securities upon which the said monies shall for the time being be invested. AND I do accordingly declare, that the receipt of her my said daughter shall, from time to time, notwithstanding any such her coverture, or any assignment or disposition by her made of the said dividends, interest, or proceeds, or any part thereof, and of her only, be a good and effectual discharge for the same. PROVIDED ALWAYS that in case my said daughter shall at the time of my decease be under the age of twenty-one years

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In default of
appointment to
her for life.

Whose receipt
alone shall be a
good discharge.

Maintenance,
&c. during her
minority.

WILLS.

*Strict
Limitations.
(Full Form.)*

Upon the de-
cease of testa-
tor's daughter.

In trust for her
children as she
shall appoint.

and unmarried, as well then as theretofore (1), the said trustees and trustee shall and may, and they are hereby directed to apply the said dividends and interest, or so much thereof, as they shall deem proper, for or towards her maintenance (2) and education until she shall attain that age or be married. AND UPON FURTHER TRUST, that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of the survivor, and their or his assigns, do and shall after the decease of my said daughter stand and be possessed of and interested in the said sum of £ three per cent. consolidated bank annuities, and the dividends, interest, and annual proceeds thereof, IN TRUST for, and to be assigned, transferred, and paid unto and amongst

"Unmarried."

(1) The word "unmarried" used in stat. 3 Wil. and Mar. c. 11. means not married at the time referred to, and not "never having been married," according to the usual import of the word; *Maberley v. Strode*, 3 Ves. jun. 452; but in a will "unmarried" is construed according to the common acceptation, "without ever having been married;" *Bell v. Phyn*, 7 *ib.* 459; a difference of construction which renders it proper that the testator should explain his acceptation of the word or express himself by some explicit phrase, as "without having been married."

Maintenance.

(2) Where legacies to children are given over on their death under twenty-one or marriage, the trustees are not authorised to apply any part of the interest for their maintenance unless empowered to do so by the testator; *Fairman v. Green*, 10 Ves. jun. 48; *Errington v. Chapman*, 12 *ib.* 20; and see *post*, p. 785, note.

all and every, or unto any one or more of the children (if there shall be more than one) or unto the only child, if there shall be but one, or other issue of my said daughter lawfully to be begotten; at such time or times, (and if more than one) in such parts, shares, and proportions, and whether one or more, with, under, and subject to such conditions, restrictions, and limitations over (such limitations over being for the benefit of some or one of the said children) if more than one, or of his, her, or their issue, as my said daughter shall notwithstanding her coverture if then married, by any deed or deeds, or other writing or writings, with or without power of revocation and new appointment, to be sealed and delivered by her in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any writing purporting to be or being in the nature of such, or any codicil or codicils thereto, to be respectively signed by her in the presence of and attested by the like number of witnesses, direct or appoint; and in default of such direction or appointment, and subject to any such as shall be made, then IN TRUST to assign, transfer, and pay the said sum of £ three per cent. consolidated bank annuities, and the dividends, interest, and annual proceeds thereof, or so much and such part and parts thereof respectively, whereof no such direction or appointment shall be made, unto, between, and amongst all and every the children of my said daughter, if there shall be more than

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(Full Form.)*

In default of
appointment to
them equally.

WILLS.

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 Limitations.
 (Full Form.)

To be paid
 (after death of
 their mother)
 to sons at
 twenty-one.
 And to daugh-
 ters at twenty-
 one or marriage.

one such child, equally to be divided between the said children, share and share alike, as tenants in common (1), and if there shall be but one such child then to such one or only child, and to his, her, and their executors, administrators, and assigns, to and for his, her, and their proper use and benefit; the share or shares of such of them as shall be a son or sons to be vested in him or them respectively, as and when he or they shall attain his or their age or respective ages of twenty-one years (2), and the share or shares of such of

Estate in joint-
 tenancy or
 common.

(1). It is frequently a matter of great doubt under the words of a will, whether children or others take an estate in joint-tenancy or in common; (*vid.* *Morley v. Bird*, 3 Ves. jun. 628; *Stuart v. Bruce*, *ib.* 632; *Whitmore v. Trelawney*, 6 *ib.* 129; *Crooke v. Des Vandes*, 9 *ib.* 197; *Folkes v. Weston*, *ib.* 456; *Gant v. Lawrence*, 1 Wightw. 395); care should therefore be taken to indicate expressly the testator's intention in this respect, either by using words of severance, as "equally between them, share and share alike," &c. See *Armstrong v. Eldridge*, 3 Brow. Ch. Ca. 215; *Martin v. Wilson*, *ib.* 324; *Campbell v. Campbell*, 4 *ib.* 15; *Jenour v. Jenour*, 10 Ves. jun. 569; or which is the better way to add the words "as tenants in common," which will prevent all question on the subject.

Bequest to chil-
 dren at twenty-
 one vests on the
 eldest attaining
 that age.

(2) If a bequest be made to all the children of a person, payable at twenty-one or marriage, the funds will vest in each of the children who shall be living when the eldest child attain that age or marry, to the exclusion of those who may be afterwards born; (although otherwise in a similar limitation by marriage settlement) see *Ellison v. Airey*, 1 Ves. 111; *Andrews v. Parkington*, 3 Brow. Ch. Ca. 401, exclusively of after-born children; *Hoster v. Pratt*, 3 *ib.* 730; *Hughes v. Hughes*, 3 *ib.* 352. 434; 14 Ves. 256, S. C.; *Gilbert v. Boorman*, 11 Ves. 238; *Whitbread v. St. John*, 10 Ves. 152; *Davidson v. Dallas*, 14 Ves. 576; *Walker v. Shore*, 15 *ib.* 122; *Barrington v. Tris-*

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them as shall be daughter or daughters, to be vested in her or them respectively, as and when she or they shall severally attain her or their age or respective ages of twenty-one years, or be married by or with the consent in writing under the hand or respective hands of her or their mother, or guardian or guardians, if any, for the time being (1) which shall first happen, and to be paid,

tram, 6 Ves. jun. 345; Whitbread v. St. John, 10 *ib.* 152; Freemantle v. Freemantle, 1 Cox, 248. This construction of law should therefore be provided against by the testator, if it be contrary to his intentions.

And when a fund has become vested in children (whether at the time of the death of the testator or at any other period, designated by the will,) it will be distributable among such only as are at that time *in esse* to the exclusion of such as may be afterwards born (except a child in *ventre sa mere*), Middleton v. Messenger, 5 Ves. 140; Walker v. Shore, 15 Ves. 124; but every child coming into *esse* before the time of distribution will be included, Barrington v. Tristram, 6 Ves. 349; Gilbert v. Boorman, 11 Ves. 238; a distinction which is very necessary to be attended to in framing a bequest amongst the children of parents *in esse*, lest the actual intention of the testator should be frustrated by the intervention of this rule of law.

A vested fund will go to children *in esse* only.

And where the bequest is of residuary property, the vesting is especially favoured in order to avoid an intestacy, Bolyer v. Mackay, 5 Ves. 509; and the whole of such bequest vests immediately and not only as the property comes in, unless otherwise declared by the will, Gaskell v. Harman, 6 Ves. 159; 11 *ib.* 48.

Vesting of residuary bequest.

But the distinction between the vesting of legacies given at twenty-one and payable at twenty-one, though now established, is applicable to personal legacies only and not to real estates, Mackell v. Winter, 3 Ves. 536; Pearce v. Loman, *ib.* 135; Bolyer v. Markwell, 5 *ib.* 509.

Vesting of legacies given at twenty-one.

(1) It was formerly doubted if a restriction by way of con-

Marriage without consent.

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assigned, or transferred to him, her, or them respectively, at the same respective ages and times,

dition imposed by a parent on the marriage of a child without consent was valid, but was afterwards holden to be good; see *Dashwood v. Lord Bulkeley*, 10 Ves. jun. 230; *Knight v. Cameron*, 14 Ves. jun. 389; and appears to be now fully confirmed by *Lloyd v. Branton*, 3 Mer. 116; *Malcolm v. Callagan*, 2 Mad. 349. But as restraints of marriage are contrary to general policy, they are strictly construed, and should, therefore, be particularly expressed with respect to time, age, persons, &c. as any doubt of the real meaning of the testator will be construed against the restriction; see *Harvey v. Aston*, 1 Atk. 375; *Mesgrett v. Mesgrett*, 2 Vern. 580; *Desbody v. Boyville*, 2 P. Wms. 547. And in order to incur a forfeiture there must be a devise over on breach of the condition, or it will be considered as *in terrorem* only.

 Interest of
 legacy.

If a legacy be given generally without any time of payment mentioned, and the legatee be an infant, he will have interest from the end of the year after the testator's death; but if he be of full age he shall have interest only from the time of demand made after the year; *Joliffe v. Crew*, Prec. Ch. 161; *Small v. Dee*, 2 Salk. 415. But if it be charged upon land or upon funded property producing interest, and no day of payment is mentioned, it will, it has been said, carry interest from the testator's death, *Maxwell v. Wettenhall*, 2 P. W. 26; but *quære*, and see *Pearson v. Pearson*, 1 Sch. and Lefr. 11. And the rule as to the rate of interest now is, to allow four per cent. only from the end of the year, whether in the case of the legacy being charged on land, or of legacies (or portions) charged on personal estate, *Gillan v. Hollis*, 2 Atk. 34; *Beckford v. Tobin*, 1 Ves. 311; *Wood v. Bryant*, 2 Atk. 523; *Stitwell v. Bernard*, 6 Ves. 520; and whether the fund out of which it is payable produces interest or not makes no difference, *Gibson v. Bott*, 7 Ves. 97; *Pearson v. Pearson*, 1 Sch. and Lefr. 12; *Webster v. Hall*, 8 *ib.* 413; but where interest is given by the will, and the legacy is charged on *personal estate* five per cent. is allowed, *Moore v. Moore*, 3 Atk. 402.

if my said daughter shall then have departed this life, but in case my said daughter shall be living at the time or times when any such child or children, being a son or sons, shall attain his or their age or respective ages of twenty-one years, or being a daughter or daughters, shall attain that age, or be married with such consent as aforesaid, then the payment, assignment, or transfer of the share and shares of such of them as shall so attain the said age, or marry in her life-time, shall be postponed or deferred until after the decease of her my said daughter. PROVIDED ALWAYS, and I hereby will and direct, that in case any one or more of the children of my said daughter, shall receive or be entitled to any part or share of the said £ three per cent. bank annuities, or the dividends, interest, or proceeds thereof, exclusively of the other or others of them, under or by virtue of any direction or appointment to be made by my said daughter, in pursuance of the power hereinbefore given to her concerning the same, such child or children last-mentioned, shall not be entitled to have or receive any further or other part or share of the said funds or securities, or dividends, interest, or proceeds (unless it shall be so declared in or by any such direction or appointment) until he, she, or they, shall have accounted for and brought into hotchpot so much or such part or share thereof as shall have been paid, assigned, transferred, or appointed, to or for the benefit of him, her, or them, under or by

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Shares appointed to any child to be brought into hotchpot.

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Survivorship of
original and of
accrued shares.

virtue of any such direction or appointment (1).
PROVIDED ALWAYS, and my will also is, that if any
 such child or children, being a son or sons, shall
 depart this life before he or they shall attain his
 or their age or respective ages of twenty-one
 years, or being a daughter or daughters, shall de-
 part this life before she or they shall attain her or
 their respective age or ages of twenty-one years,
 and without being married with such consent as
 aforesaid, then the share or shares of him, her, or
 them so dying, or so much thereof as shall not
 have been disposed of, or applied for his, her, or
 their advancement or preferment in the world, in
 pursuance of the power hereinafter contained for
 that purpose, shall (unless any direction or ap-
 pointment shall be so made as aforesaid by my
 said daughter to the contrary), go, accrue, and
 belong to the survivors and survivor, or other
 and others of such children or child, and shall
 vest (2) in and be assigned, transferred, and paid

Hotchpot.

(1) Although any of the children should have a part of the fund appointed to them by the parent under the power given for that purpose, yet such child will, unless it be otherwise declared, be entitled to an equal division of the residue with the other children; *Alexander v. Alexander*, 2 Ves. 649; *Bristow v. Ward*, 2 Ves. jun. 336.

Proviso for survivorship.

(2) The vesting of a legacy is not prevented by a proviso for survivorship amongst the legatees, in case of the death of either of them under twenty-one; but it will vest, subject to be divested on the event mentioned; *Russell v. Long*, 4 Ves. 551; *King v. Taylor*, 5 Ves. 806; *Deane v. Test*, 9 Ves. 146; *Davidson v. Dallas*, 14 Ves. 576; *Walker v. Shore*, 15 Ves. 122; and

to him, her, or them, if more than one, in equal shares and proportions, and if but one, then to and in such one child and the respective representatives of such of them as shall have departed this life at such and the same time or times as is hereinbefore declared or expressed, relative to his, her, and their original share and shares. AND so from time to time in case of the decease of any other child or children of my said daughter, after the decease of any one or more of them, before any such accruing or surviving share or shares shall have become vested in him, her, or them, all and every the said accruing or surviving share or shares (1) of such child or children so dying, shall be subject to the same or like contingency or quality of accruer, as his, her, or their original

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Like survivor-
ship as to ac-
cruing shares.

either of the children dying in the testator's lifetime will be well given over to the survivors; *Willings v. Baine*, 3 P. Wms. 113; *Leddson v. Hickman*, 2 Vern. 611.

And to prevent the lapse of a legacy it should be specially penned for the purpose; *Sibthorp v. Moxom*, 3 Atk. 582. And should the lapse be of real estate, the heir at law will take; but if personalty, it will go to the residuary legatee; *Cambridge v. Rous*, 8 Ves. 25.

Lapse of legacy.

(1) It is necessary that the provision for the accrued shares of any of the deceased children should be declared to be subject to the same survivorship as their original shares, as otherwise such accrued shares will be considered as a new legacy vesting in them, and not survive to the others; see *Perkins v. Micklethwaite*, 1 P. Wms. 275; *Pain v. Benson*, 3 Atk. 80; *ex parte*, *West*, 1 Brow. Ch. Rep. 538; and where children take any interest in their own right, they take *per capita*, but when by representation, they take *per stirpes*, 1 Ball and Beat. 486, which makes the provision material.

Accrued shares.

WILLS.

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 Limitations.
 (Full Form.)

Issue of sons
and daughters
under twenty-
one, to take
their parents'
share.

Further trust
for maintenance
and education of
children during
their minority.

share or shares, and the same, or so much thereof as shall not have been disposed of or applied for his, her, or their preferment or advancement in the world as aforesaid, shall go and belong to the other or remainder of the said children, or the remaining only child, as the case may be, and shall be vested in and payable, assignable, or transferrable to him, her, and them respectively, at the same time or times as such original share or shares shall, by virtue of this my will, become vested, payable, assignable, or transferrable. PROVIDED ALWAYS, and I do hereby will and direct, that notwithstanding any thing hereinbefore contained, in case any such child or children, being a son or sons, shall depart this life under the age of twenty-one years, leaving lawful issue of his or their body or bodies, such issue shall together and *per stirpes*, have and be entitled, and I do hereby give and bequeath to him and them respectively, such part or share of or in the said trust estates and premises, as his or their parent or respective parents would have had or been entitled to, if he or they had lived to attain the age of twenty-one years, although no interest therein shall in the meantime vest in him or them, so as to enable him or them respectively to give or dispose, or charge or incumber the same, until the attainment of that age. AND UPON THIS FURTHER TRUST, from and after the decease of my said daughter, and in default of such direction or appointment in that behalf, that they the (*trustees*) and the survivors and survivor of them, and the execu-

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tors and administrators of the last survivor, and their and his assigns, do and shall in the meantime, and until the share or shares, or presumptive share or shares, whether original or accruing, of such child or children, of and in the said trustmonies, funds, and securities, shall become payable, assignable, or transferrable to him, her, or them respectively, pay the dividends, interest, and annual proceeds thereof (but without any interest thereupon (1)), into the hands of the guardian or guardians for the time being (if any) of such child or children (2), in order that the same or any part thereof may be by him or them applied and appropriated for or towards the maintenance and education of such child or children respectively (3); and in case there shall be no guar-

(1) The courts will not allow interest on arrears of sums allowed for maintenance; *Mellish v. Mellish*, 14 Ves. 516; if, therefore, the testator intend that such arrears should carry interest, he must so direct. No interest on arrears.

(2) If no directions be given to whom a legacy shall be paid in case the legatee be a minor, the executors are authorised, by 36 Geo. III. c. 52. s. 32, to pay it into the bank of England, to be invested in the purchase of 3 per cent. consolidated bank annuities, in the name of the accountant-general of the court of Chancery; should therefore the testator not wish this to be done, he should expressly direct to whom the same is to be paid. Legacies of minors to be paid into the bank.

(3) No maintenance will be allowed out of legacy given by stranger or relation to children, even though directed by testator, if the parent be of ability to maintain them, but it must accumulate; *Hughes v. Hughes*, 1 Brow. Ch. Ca. 387; *Monday v. E. of Howe*, 4 *ibid.* 223; and see *ante*, p. 774, n. (1).

But although no maintenance is given by the testator, the court will allow it to children of the testator until the time of the le-

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Surplus to accumulate.

dian of such children or child, then to pay and apply the same, or any part thereof, for that purpose, in such manner as they the said trustees or trustee shall in their or his discretion think proper. AND lay out and invest the surplus or savings of the dividend or interest of such presumptive share or shares of the said children or child, which shall not be applied for such maintenance or education as aforesaid, in the purchase of three per cent. consolidated bank annuities, in the name or names of them or him the said trustees or trustee, in order that the same may accumulate (1) for the benefit of the said children

gacy being payable; *Rennison v. Parrot*, 1 Ch. Ca. 60; *Convey v. Longville*, 1 Eq. Ca. Ab. 301, pl. 3; *Heath v. Perry*, 3 Atk. 102; *Carey v. Askew*, 2 Brow. Ch. Ca. 58; but not so as to grandchildren; *Palmer v. Mason*, 1 Atk. 505; *Naughton v. Harrison*, 2 *ib.* 330.

Interest does not vest legacy.

But giving maintenance to legatees during their minority, is not equivalent to interest for the purpose of vesting the legacy; *Pulsford v. Hunter*, 3 Brow. Ch. Ca. 416; *Hanson v. Graham*, 6 Ves. 239; *Goodtitle v. Whitby*, 1 Bur. 228.

Accumulation of rents or interest not to exceed lives in being, &c.

(1) By 39 and 40 Geo. III. cap. 98, it is enacted that no person shall, by deed or will, settle or dispose of any real or personal property in England or Wales, (except for payment of debts or providing portions for children or relatives) in such manner as that the rents or other proceeds that shall accumulate for any longer term than the life of the grantor or settler, or the term of twenty-one years from his or her death, or the minority of any person living or in *ventre sa mere* at the time of such death, or of any person who by virtue thereof would, if of age, be entitled to the said rent, &c. see *post*, rider (B). The utmost length of time therefore to which the limitation of personalties, or the rents and profits of real estates can now be extended, so as to preserve them in the same family without power of alien-

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Power to advance part of children's shares during minority.

respectively, or be applied in making good the insufficiency of the dividends or interest of any preceding year or years for the aforesaid purposes. PROVIDED FURTHER, and it is moreover my will and desire, that the said trustees or trustee do and shall, after the decease of my said daughter, if they shall think proper, or in her lifetime, by or with her direction or consent, to be testified under her hand, pay, apply, or advance (1) the whole or any part of the expectant or presumptive share or shares of the said children or child, or of any or either of them, unto him, her, or them, or to any other person or persons for his, her, or their preferment in life or advancement in the

tion, is during any number of lives living at the time of the bequest taking effect by the death of the testator, and twenty-one years and a few months (i. e. the months of gestation) afterwards, see *Long v. Blackall*, 7 Durnf. and E. 100, 3 Ves. jun. 486; *S. C. Thelluson v. Woodford*, 4 *ibid.* 227; after which time it will become an absolute interest in the next taker, and assignable at pleasure. It has, however, been determined, that although this period be exceeded, the disposition will be good during the time allowed, and not void for the whole; see *Griffith v. Vere*, 9 Ves. jun. 127; *Longdon v. Simson*, 12 *ibid.* 295.

And the direction that surplus interest shall accumulate after maintenance and preferment, does not prevent the vesting of the legacy; *Bolger v. Mackay*, 5 Ves. 509; *Booth v. Booth*, 4 *ib.* 399.

(1) Where the mother has a life interest in the trust monies, no part of it can be applied for the advancement of the children during her life, unless with her consent, or a power be given to the trustees for that purpose; and see *ante*, p. 345, n. (1).

Vesting of legacy.

Advancement.

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Receipt of
guardian, &c. to
be good dis-
charge.

Such part of
the said sum as
children shall
not become en-
titled to, to be
deemed part of
the residue of
testator's per-
sonal estate.

world, in such manner as he or they the said trustees or trustee shall deem advisable or expedient, although the portion or portions of such child or respective children shall not then have become payable or vested. AND I do hereby further declare, that in case any such dividends, interest, or annual proceeds of the said trust-monies, or any part of the principal thereof, being so paid, applied, or disposed of, for the maintenance and education or advancement of the said children, or any or either of them, the receipt or other acquittance of the guardian, curator, tutor, or other person to whom the same shall be paid, shall be a good and effectual discharge to the said trustees and trustee, and they, or any or either of them, shall not thereafter be accountable for the same, or be in anywise bound to see to the proper application thereof, or any part thereof. AND UPON FURTHER TRUST, and my will is, that they the said trustees and trustee last aforesaid, shall stand possessed of, and interested in all such and so much of the said sum of £ three per cent. consolidated bank annuities, and all such of the stocks, funds, and securities, wherein or upon which the same or any part or parts thereof shall be invested or laid out, and which shall not become vested in, or belong to any child or children of my said daughter, or be disposed of or applied for his, her, or their preferment or advancement in the world, in pursuance of the trusts or directions aforesaid, as a part or residue of my per-

sonal estate, and the same shall go and belong to my next of kin (1), under the statute for the distribution of the estate and effects of persons dying intestate. PROVIDED ALWAYS, and my will further is, that the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of the survivor, and their and his assigns, shall and lawfully may, at any time or times during the life of my said daughter, with her consent in writing, signed with her hand, and after her decease, at the discretion of them or him the said trustees or trustee, sell (2), transfer, and dispose of the said sum of £ three per cent. consolidated bank annuities, or any part thereof, and all or any other the trust-monies and securities aforesaid, and lay out or invest the produce, or sum or sums of money to arise from any such sale or sales, and also all or any part of such other monies as shall be paid or come to their or his hands in pursuance of any of the trusts aforesaid, in any public stocks, funds, or parliamentary se-

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Power for trustees to change the funds and securities of the trust-monies.

(1) The bequest by a husband to his "next of kin" does not include his wife, nor does such bequest by a wife include her husband; *Garrick v. Camden*, 14 Ves. jun. 382; *Bailey v. Wright*, 18 *ib.* 49. 1 Swanst. 39 S. C.; but intends the nearest of blood to the testator; if, therefore, the testator have any other conception of the word he should explain his actual intent.

Next of kin does not mean husband or wife.

(2) Executors cannot with safety change the funds of the testator unless authorised by the will; *Waite v. Wormwood*, 2 Atk. 159; this power should therefore always be expressly given to them, if the testator would wish them to have it.

Executors cannot vary funds.

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curities, at interest, in their or his names or name, and again from time to time sell, assign, transfer, and dispose of the said last mentioned stocks, funds, and securities, and lay out and invest the monies arising thereby in or upon any new or other like stocks, funds, or securities, as they the said trustees or trustee with such consent, or of such their own authority as aforesaid, shall think fit and expedient; all and every which said stocks, funds, and securities, and the dividends, interest, and annual proceeds thereof respectively, shall be and remain upon and for such trusts, intents, and purposes, and with and subject to such powers, provisos, and declarations, as are hereinbefore mentioned and expressed, of and concerning the said sum of £ three per cent. consolidated bank annuities, and the interest and annual proceeds thereof, or such and so many of them as shall for the time being be subsisting or capable of taking effect.

Bequest of a Legacy in trust for an extravagant Son.

Bequest to trustees to protect against creditors.

I give and bequeath the sum of £ three per cent. consols, unto (*trustees*) their executors, administrators, and assigns, UPON TRUST, that they the said (*trustees*) or the survivors or survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the

time being, do and shall, from time to time, or at any time or times during the natural life of my said son , at the discretion of such trustees or trustee, but without being in any manner answerable for the exercise of such discretion, lay out, apply, and dispose of the dividends and annual proceeds thereof, or of so much and such parts thereof only as they or he, in their or his discretion shall think fit, for providing my said son, or any lawful issue begotten, or to be begotten of my said son, or both, with board, lodging, clothing, or other necessities, or otherwise for the benefit of him my said son, or for the maintenance, education, or benefit of such lawful issue of him my said son as aforesaid, in such proportions and manner and form as they my said trustees or trustee shall think fit, with full power for them or him, from time to time, to lay out and invest the whole, or so much and such parts of the said dividends and interest as they or he shall not think fit to apply for the benefit of my said son, or of any such lawful issue as aforesaid, at interest on government or real security or securities, at the discretion of my said trustees or trustee, to the end and intent that the same may accumulate for any such time as they or he may think proper for the benefit of the lawful issue of my said son, whether in being at the time of such investment or not. PROVIDED ALWAYS, and I hereby expressly declare and direct, that all and every the trustees and trustee for the time being

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of this my will, shall have full discretionary power, without being in any manner answerable for the exercise of such discretion, from time to time, to advance or apply so much and such part of the said principal trust-money, or of any such accumulations as aforesaid, if any such there be, unto or for the benefit of my said son, or of any such lawful issue of him my said son, during the lifetime of my said son, in such manner as my said trustees or trustee shall think fit, and not otherwise (1); and from and after the decease of my said son, as to and concerning the said principal money, and such accumulation as aforesaid, if any such there be, or so much thereof respectively as shall not have been applied or advanced as aforesaid, then UPON TRUST (*for the children, in the usual manner.*)

Bequest from
creditors.

(1) It is a rule in equity, that although property may be given over upon the happening of any contingency, as bankruptcy, &c. yet while it continues in the possession of the donee, or he retains any power over it, it is subject to his debts; see *Brandon v. Robinson*, 18 Ves. 429. The only mode, therefore, by which a man can derive any benefit from a bequest without his creditors being liable to attach it, is by restraining from creating such a trust in favour of the donee as he may compel the performance of; for if he be prevented from enforcing a claim, no creditor or person claiming under him, will be in a better situation. The provision in the next has been framed with that view.

WILLS.

Devises and Bequests for charitable Purposes.

*Strict
Limitations.
(Full Form.)*

I give and bequeath the sum of £ unto
(*trustees*) their executors, administrators, and as-
signs, UPON TRUST that they and the survivor of
them, and the executors and administrators of
the survivor, and their and his assigns, do and
shall, as soon as conveniently can be after my de-
cease, lay out and invest the same in the purchase
of three per cent. consolidated bank annuities,
and stand possessed of and interested in the same,
and the dividends, interest, and annual proceeds
thereof, to be by them applied, from time to time,
in such manner as they may think fit for the
maintenance and schooling of one boy and one
girl of the parish of , to be selected by the
churchwardens of the said parish for the time
being, until the age of fourteen years, and then
in placing him or her out apprentice to any trade
or business, which in the opinion of such church-
wardens shall be suited to their respective ca-
pacities(1) Also I give and bequeath the sum

Devise for a
charitable pur-
pose.

(1) Notwithstanding the statutes of mortmain, lands are al-
lowed to be given by will or otherwise to charitable uses or pur-
poses, amongst which are reckoned devises for the maintenances
of a school or hospital, relief of poor persons, repairs of churches,
highways, bridges, &c.; Flood's Ca. Hob. 136; Rex v. Newman,
1 Lev. 284. And in case of a devise to trustees for a charity,
and they die in the testator's lifetime, the devise, although it
lapse at law, will, in favour of the charity, be supported in
equity; Attorney-Gen. v. Hickman, 2 Thel. 4.

Charity
bequests.

Devise to
charity.

WILLS.

*Strict
Limitations.
(Full Form.)*

of £ unto the minister and churchwardens
of the parish of , UPON TRUST, to invest the

But to lay some restriction upon an improvident disposition of property even for these purposes, it is provided by 9 Geo. II. c. 36, sec. 1. "That no lands or tenements, rents, or other hereditaments, corporeal nor incorporeal, money, goods, chattels, stocks, securities for money, or other personal estate, to be laid out in the purchase of any lands, tenements, or hereditaments, shall be given, appointed, or otherwise conveyed or settled to or upon any person or persons, bodies politic or corporate, or otherwise, for any estate or interest whatsoever, in trust or for the benefit of any charitable use whatsoever, unless by deed indented, and sealed and delivered in the presence of two or more witnesses, twelve calendar months preceding the death of the donor or grantor, and enrolled in Chancery within six months after the execution, nor any stock in the public funds, unless it be transferred within the like period; and in both cases the devise must take effect immediately, and be free from any power of revocation or other clause for the benefit of the donor or grantor, or persons claiming under him, except (sect. 2.) *bonâ fide* purchasers for a full and valuable consideration, and (sec. 4.) gifts, &c. made to the colleges of Westminster, Eton, and Winchester."

And the act extends not only to devise of land, but to money charged upon or to arise out of it; *Attorney-General v. Lord Weymouth*, Arb. 20; *Dalton v. James*, cited *Magg v. Hodges*, 2 Ves. 52; *Arnold v. Chapman*, 1 Ves. 108.

And a bequest of money connected with a devise of land, will be void by the statute, although the devise be revoked by a subsequent conveyance; *Attaney v. Hosman*, 2 Jac. and Walk. 270.

But if the testator direct that a bequest of money for a charity shall not be laid out in land, although under a declared expectation that lands would be given to the charity for the purpose intended, it will not be within the act; *Henshaw v. Atkinson*, 3 Madd. 306.

Jews.

A bequest for the maintenance of an assembly for reading the Jewish law, and advancing the Jewish religion, is illegal; *De*

same in the public funds of Great Britain, or on other good and sufficient security, at their discretion, and to apply the annual and other dividends, interest, and proceeds thereof, in the purchase of bread, coals, wood, or clothing, for the poor of the said parish, in hard or rigorous times or seasons, according to the judgment and discretion of the said minister and churchwardens for the time being.

WILLS.

*Strict
Limitations.
(Full Form.)*

I give to the said (*trustees*) the sum of £
UPON TRUST, to place out the same on government or real securities, at interest, in the name of such persons as he, his executors, or administrators, shall think proper, with liberty to the trustees or trustee thereof for the time being, of transposing the same, to the intent that such trustees or trustee do apply the interest or dividends arising therefrom, for or towards the education of four poor boys, at or in the said school at afore-said, to be from time to time nominated by such trustees or trustee for the time being.

For educating
four poor boys.

I give the sum of £ to the treasurer for the time being of the infirmary of in the county of , to be applied to the charitable purposes of that institution (1).

To a hospital.

Costa v. De Paz, 2 Swanst. 487, n.; but a bequest for the support of poor Jews is good, *ib.*

But a devise to a charity must be specific and certain; therefore a devise in trust for such charitable purposes as the trustees shall think fit, was holden to be void for uncertainty; *Morice v. Bp. of Durham*, 9 Ves. jun. 339, 10 *ib.* 522, s. c. *ib.* 536.

Devise to
charity must be
certain.

(1) The proper forms of bequests to various charitable in-

WILLS.

*Strict
Limitations.
(Full Form.)*

For releasing
prisoned
debtors.

I will and direct that my executors shall, within
months after my decease, lay out and expend
the sum of £ in releasing and discharging
such poor prisoners who shall be imprisoned at
my decease in prisons, or one of them, for
debt, as my executors shall think fit, having re-
gard in the application of the said sum herein-
before for this purpose given, to such poor pri-
soners as shall be then in prison, whose conduct
has been virtuous and industrious, whose families
are in want, and whose confinement has been
owing to losses and misfortunes, and not to idle-
ness, drunkenness, or debauchery.

*Directions that a Legacy to a Child shall have
Priority.*

Bequest of a
special legacy
to have priority.

I give and bequeath unto my son the
sum of £ sterling money, to be paid to him
for his own proper use and benefit, within the
space of one calendar month next after my de-
cease. PROVIDED ALWAYS, and I do hereby de-
clare, that the legacy of £ given to my said
son shall have in every respect a priority
and precedence over every other legacy herein-

stitutions, may generally be found in the lists occasionally pub-
lished of the subscribers to them, and which will be advisable
to adopt when at hand.

before by me given; and in case the estates hereby or by law chargeable with the payment of the legacies hereby given, shall not be adequate or sufficient to pay the whole of the said legacies, the deficiency shall be immediately made up by monies to be raised under the trusts of the said term of 300 years; and then and in such case the said legacy of £ to my said son shall be in the first place fully paid and satisfied, and shall not be brought to contribute in proportion with the other legacies, and if the rents, issues, and profits of the hereditaments upon which the said bequests are charged and chargeable, shall not be sufficient to answer and pay the interest of the said sum of £ to my said son, and the other legacies by me given, then and in such case I hereby direct that the interest of the said sum of £ be first fully and entirely paid and satisfied, and that until the same should be paid and satisfied, no interest should be paid for on account of any other such legacy or legacies hereby given to my said daughter, shall be paid and payable at or immediately after my decease; and in case of any delay of payment thereof, the same shall bear interest immediately after my decease, after the rate of five per cent.; but all other legacies hereinbefore by me given, shall only be payable at the end of twelve months after my decease.

WILLS.

*Strict
Limitations.
(Full Form.)*

WILLS.

Strict
Limitations.
(Full Form.)

Devise of lands
to a natural
child.

Devises, &c. to a Natural Child of Testator (1).

Also I give and devise ALL that messuage or tenement, with the lands and appurtenances thereto belonging, &c. unto and to the use of them the said (*trustees*) and their heirs, upon the trusts, and for the ends, intents, and purposes hereinafter mentioned concerning the same, (that is to say), IN TRUST for the only benefit of A. B. (*a natural son*) (or usually so called, named, or known) of, &c. (2), for and during the term of

Illegitimacy.

Devise to natural child must be by description.

(1) Bequest to an unborn illegitimate child good under circumstances; *Evans v. Massey*, 8 Pri. 22.

(2) An illegitimate child will not take under a general devise to the children of the testator; *Cartwright v. Vawdry*, 5 Ves. 530; *Godfrey v. Davis*, 6 *ib.* 43; hence such child, if intended to take, must be mentioned *nominatim*; see *Arnold v. Preston*, 18 Ves. 288, and must be so described as to identify him by personal description, after he has gained a name by common report, and not by a name of kindred or relationship, as the son and daughter of the testator; see Co. Lit. 3 b. n. (1); for until he has gained such name, he cannot take by devise; but under a bequest by an unmarried man "to his children" parol evidence will be allowed to show who the testator considered in the character of children, and they having obtained a name by reputation, will be allowed to take as a class, although illegitimate and not named in the will; *Beachcroft v. Beachcroft*, 1 Madd. 430, and *vid.* also *Tytler v. Dalrymple*, 2 Mer. 419; *Carle v. Wilson*, 17 Ves. 531; a devise to an illegitimate child, therefore, in *ventre sa mere* (although good in other cases) would, it should seem, be void to a bastard, however circumstantially the person intended by the testator may be described. See Co. Lit. 3, b. 123, b. *Metham v. Duke of Devonshire*, 1 P. Wms. 529.

But if the bequest be to the child of which a woman be

his natural life, (without impeachment of or for any manner of waste), and from and after the determination of that estate (1), IN TRUST for such person and persons, and to and for such estates or interests, and ends, intents, and purposes, as he the said (*natural son*) shall, in and by any deed or deeds, or by his last will and testament, or any writing purporting to be such, direct, limit, or appoint; and in default of such direction, limitation, or appointment, IN TRUST for the heirs of the body of him the said (*natural son*); and in default of such issue, IN TRUST for my own right heirs. Also I give and bequeath unto the said (*trustees*) their executors, administrators, and assigns, the sum of £ , UPON TRUST that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of

WILLS.

*Strict
Limitations.
(Full Form.)*

Bequest of pecuniary legacy for a natural child.

enceint, without reference to any particular person as the father, it will be good, there being no uncertainty in the object described; *Gordon v. Gordon*, 1 Mer. 141; *Carle v. Wilson*, 17 Ves. 528; but doubtful whether, if the child be not in *ventre sa mere* at the time of the devise, it would be valid; 1 Mer. 141.

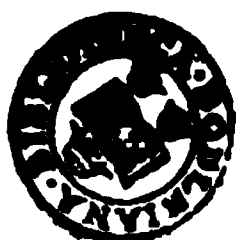
(1) As the lands of an illegitimate person will upon his death without issue escheat to the crown, or the lord of the manor, Co. Lit. 244, in devising an estate to an illegitimate child, it may (in order to prevent such escheating) be limited to him in tail, in which case, by levying a fine or suffering a recovery, he will acquire a new estate in fee-simple, which, upon his decease without issue, will revert to the devisor's heirs; or, in order to save the expense of barring the entail, it may be limited to the use of trustees, IN TRUST for him for life, in remainder to such persons, &c. as he shall by deed or other writing appoint, with remainder to himself in tail, as above.

Lands of bastards escheat on death without issue.

WILLS.

*Strict
Limitations.
(Full Form.)*

the survivor, and their and his assigns, do and shall lay out and invest the same in the purchase of three per cent. consolidated bank annuities in their or his names or name, and pay and apply the dividends, interest, and annual proceeds thereof, for and towards the clothing, maintenance, education, and support of C. D. (*another natural child*), or so commonly called or known, now being of the age of or thereabouts, and residing at , in the school of , in such manner as they the said trustees or trustee shall think fit and most for his advantage. AND UPON FURTHER TRUST, that when and as soon as the said C. D. shall attain the age of twenty-one years, they my said trustees do and shall transfer and pay the said bank annuities and other the securities upon which the said sum of £ shall for the time being be laid out or invested unto him the said C. D. his executors, administrators, and assigns, to and for his and their own proper use and benefit; with full power, nevertheless, for my said trustees or trustee, and they and he are hereby directed, if they or he shall think proper, to pay or apply the whole or any part of the said monies, funds, and securities, at any time or times during the minority of the said C. D. for purchasing him a commission in the army, or other his promotion or advancement in life, in such manner as they shall think best; and also with full power for them or him my said trustees or trustee, to vary, alter, and change the said funds and securities for other funds or securities of a like nature, and



to sell out or transfer the same, or any such new funds or securities for that purpose, when and as often as they or he shall think fit.

WILLS.

*Strict
Limitations.
(Full Form.)*

Bequest of Bank Annuities for a Natural Child.

AND my will is, and I do hereby further direct that my said executors, and the survivors and survivor of them, and the executors and administrators of such survivor, do and shall stand possessed of and interested in so much and such further part of the said trust monies, funds, and securities, as, according to the market price of the aforesaid three per cent. consolidated bank annuities at the time of my decease shall be of the value of £ sterling, IN TRUST for (*illegitimate daughter*) one of the daughters of the said (*mother of illegitimate daughter*) now of the age of years, or thereabouts, and do and shall pay and apply all or such part of the interest, dividends, and annual proceeds of the said stocks, funds, and securities as to them my said executors, or the survivors or survivor of them, or the executors or administrators of the survivor, shall seem reasonable and proper towards the maintenance and education of the said (*illegitimate child*), and from time to time lay out and invest the surplus, savings, or residue of the said interest, dividends, and annual produce of the said stocks, funds, and securities in like three per cent. consolidated bank annuities, in order that the

Bequest of bank
annuities to
natural child.

WILLS.

*Strict
Limitations.
(Full Form.)*

same may accumulate for the benefit of her the said (*illegitimate child*) until she shall attain the age of twenty-one years or be married with the consent of my said executors, or the acting or only acting executors or executor, or trustees or trustee for the time being of this my will and of the said trust funds. AND upon, and from, and immediately after her said marriage, or attaining her said age of twenty-one years, then IN TRUST that they my said executors and trustees do and shall pay, apply, and dispose of the interest, dividends, and proceeds of the said three per cent. consolidated bank annuities, or other the funds and securities thereof for the time being, as the same shall from time to time arise and be received, unto the said (*illegitimate child*) and her assigns, or otherwise, do and shall permit and empower her and them to receive and take the same to her and their own use for and during the term of her natural life.

Bequest of Legacy to Illegitimate Children of Testator who may be born after the Date of his Will, or after his Decease.

Bequest to unborn natural child.

PROVIDED ALSO, and it is my further will, intent, and meaning, and I do hereby declare, that in case the said (*mother of illegitimate children*) shall have any other child or children in my lifetime who shall be adopted by me, or considered and treated by me as mine, or in case she shall,

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Limitations.
(Full Form.)

at the time of my decease, be *encient*, or pregnant with any child or children who shall be afterwards born alive within the space of nine calendar months, or other usual period of gestation, next after my decease, then, and in such case, I do hereby will and direct, that my executors and trustees aforesaid shall stand possessed of and interested in all and singular the said trust-funds, securities, and property so truly devised or bequeathed to them as aforesaid, IN TRUST to raise and pay thereout one other or a like sum of £ sterling to each and every of the said children who shall be a daughter or daughters, and one other or a like sum of £ to each and every of the said children who shall be a son or sons, whether the same be mine or not, and to be paid and payable, and to become a vested interest and vested interests in such of them as shall be a daughter or daughters at such and the same ages and times, and with and subject to such benefit of accumulation and chance of accruer and survivorship between him, her, and them, the said last-mentioned or after-born children or child, and them the said (*illegitimate children*) hereinbefore-named, as if they the said children or child were or was now living and expressly named or described in this my will, and the said legacy or sum so bequeathed or directed to be paid to such of the aforesaid children or child as shall be a son or sons, to be paid and payable to him or them, as and when he or they shall attain his or their age or respective ages of twenty-one years, but never-

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Limitations.
(Full Form.)

theless to become a vested interest in him or them at or upon the decease of me the said (*testator*), and the shares or portions and legacies of each of the said children, whether sons or daughters, to go and accrue to his, her, or their lawful issue respectively, in such manner as is hereinbefore declared or expressed as to or respecting the two several sums of £ and £ hereby directed to be paid to the said (*illegitimate children*) as aforesaid. AND I do hereby further will and expressly declare, that it shall not be necessary or required that any such children or child of the said (*mother*) who shall be hereafter born shall have acquired the name of , or other name or names, by reputation or otherwise, in order to entitle him or them to the said legacies or legacy so hereby bequeathed or directed to be paid to him, her, or them respectively; but that and in case of any question arising with respect to whether any child or children of the said (*mother*) who shall be hereafter born (whether in my lifetime or within such time after my decease as herein is mentioned) would or ought to have been adopted by me, or considered as mine or not, the same shall be settled, and absolutely and finally determined by the executors or trustees of this my will, or if more than two, then by the major part of them, and the opinion and determination of such executors or trustees, or the major part of them, shall be definitive and conclusive, without any reference or appeal being had or made to any court of law or equity. AND I do hereby expressly will and de-

clare that the receipt and receipts of any such children or child of the said (*mother*) who shall hereafter be born, or of his, her, or their guardian or guardians for the time being, for the legacies or legacy so hereby bequeathed or directed to be paid to them, him, or her respectively, or any part thereof, or of any dividend or interest to arise or accrue therefrom, shall at all times, and from time to time, notwithstanding his, her, or their supposed or apparent illegitimacy, or his, her, or their posthumous birth, be a good and sufficient discharge and good and sufficient discharges to such executors and trustees, and each and every of them, for the said legacies or legacy, dividends, interests, or other monies so to him, her, or them paid under or by virtue of this my will, and such executors or trustees, or any or either of them, shall not at any time or in any case or event thereafter be responsible or accountable for the same, or in any manner questioned by reason thereof or in relation thereunto, and that notwithstanding there may be any *lis pendens*, or other suit, proceeding, dispute, or controversy, by or between such children or child, and my next of kin, or any other person or persons whomsoever, concerning the same, or any part thereof. PROVIDED ALSO, and I do hereby declare, that if any person or persons named or referred to in this my will, to whom any legacy or sum of money is hereby given or directed to be paid, or his, her, or their executors, administrators, or assigns, shall commence or prosecute any action, suit, or proceeding, in any

WILLS.

Strict
Limitations.
(Full Form.)

WILLS.

*Strict
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(Full Form.)*

court or courts of law or equity, for or concerning any legacy or bequests by this my will made or given to or in favour of any child or children of her the said (*mother*), such person or persons shall from thenceforth forfeit, lose, and cease to be entitled to all and every such legacy, sum of money, and other beneficial interest so given or directed to be paid to or hereby intended for him, her, or them, any thing hereinbefore contained to the contrary thereof, in any wise notwithstanding (1).

(1) The following opinion was given by Mr. Bell on the above form :

“ I THINK the two legacies to the two present children are good ; so that the limitations over to their sons be made payable at twenty-one, and not at twenty-five, as wished for, that would either have no effect to postpone the payment after twenty-one, or it will make it void—and I fear it will be void. As to the legacies to the children which may be born, notwithstanding all the care that has been taken, they will, I think, be void, and it will be better to omit every thing as to any such children to be born, for I do not think it will be possible to give any such legacies to unborn illegitimate children. The only thing will be for the testator to keep a codicil in blank by him ready to be filled up and executed when a child is born. He may also have one ready to be filled up and executed in case she should prove with child ; but it is at least very doubtful whether the child, being illegitimate, can take any thing until it is actually born, and has got a name by reputation, which it may have as soon as born.

(Signed)

JOHN BELL.”

Lincoln's-Inn,
November 29, 1810.

WILLS.

*Strict
Limitations.
(Full Form.)*

Bequest of a Sum for Support of a Natural Child.

AND I do hereby give and bequeath to my said executors and trustees the sum of £ of lawful money, upon trust, that they my said executors and trustees, or the trustees or trustee for the time being, do and shall lay out and invest the same in their or his own names or name, or in or upon government or real securities in England, at interest; and do and shall during the minority of my natural son now aged years or thereabouts, born at , on the day of October, , and now at school at , pay, apply, and dispose of the dividends, interest, or proceeds of the said last-mentioned stocks, funds, and securities for and towards his maintenance and education, and in providing clothes and other necessaries for him, in such way as my said trustees or trustee shall think advisable: and upon further trust, that when and so soon as my said natural son shall have attained the full age of twenty-one years, then that my said executors and trustees, or the trustees or trustee for the time being, do and shall transfer and assign the said stocks, funds, and securities unto my said natural son, to and for his own use and benefit. PROVIDED nevertheless, and I do hereby declare, that it shall and may be lawful to and for my said executors and trustees, or the trustees or trustee for the time being, to raise by and out of the said stocks, funds, and securities upon which the said

WILLS.

*Strict
Limitations.
(Full Form.)*

sum of £ shall be so invested, any sum or sums of money, not exceeding in the whole the sum of £ , for the purpose of placing out my said natural son apprentice, or otherwise for preferring or advancing him in or to any profession, business, or employment, and to pay, apply, and dispose of the money so to be raised for any of those purposes accordingly, in such way and manner as they or he shall judge most advisable for his benefit.

If this sum not
wanted, to sink
into the residue.

PROVIDED, and my will is, and I do hereby declare, that in case my said natural son shall depart this life before he shall attain the full age of twenty-one years, then the said sum of £ hereinbefore given and directed to be laid out for his benefit, or the stocks, funds, or securities wherein or upon which the same shall then be invested, or so much thereof as shall not have been applied or disposed of for the advancement or preferment of my said natural son, according to the authority hereinbefore contained and given for that purpose, shall sink into and become part of my residuary personal estate, and shall accordingly be applied upon the trusts hereinafter by me directed concerning the same.

WILLS.

Trust of Annuity to be void, and go over on Alienation.

*Strict
Limitations.
(Full Form.)*

TO HAVE, HOLD, receive, partake, and enjoy the said annuity, yearly rent-charge, or annual sum of £ , hereinbefore granted or mentioned, or intended so to be, unto and by him the said (*trustee*) his executors, administrators, and assigns; But nevertheless upon the trusts, and to and for the ends, intents, and purposes hereinafter expressed concerning the same, (that is to say) UPON TRUST that he the said (*trustee*) his executors, administrators, and assigns, do and shall well and truly pay, or cause to be paid, the said annuity, yearly rent-charge, or annual sum of £ unto and into the proper hands of him the said (*annuitant*) until he shall make or execute some grant, bargain and sale, mortgage, assignment, or disposition of or charged upon the same, or some part thereof, or of or upon the securities for the same, or some or one of them, or make or do, or attempt to make or do, or cause or procure, or willingly suffer to be made or done, some contract, agreement, or other act, matter, or thing, with a view or design to convey or transfer the said annuity, or some part thereof, unto or to vest the same, or some part thereof, in and for the use of some other person or persons, or to change or make the same, or some part thereof, liable to pay any sum or sums of money, or otherwise receive the benefit thereof, or of some part thereof, by

WILLS.

*Strict
Limitations.
(Full Form.)*

anticipation. AND from and after he the said (*annuitant*) shall or do, at any time or times, make or execute, or attempt to make or execute, any grant, bargain, sale, mortgage, assignment, contract, or agreement, or do, or cause, or procure to be done, or willingly permit any other act, deed, or thing with a view or intent to convey, transfer, or vest the same, or any part thereof, or any security for the same, unto or in any other person or persons, or to charge or make the same, or any part thereof, liable to any sum or sums of money, or to have or receive the same, or any part thereof, by way of anticipation, then, and in either of the said cases, and from and immediately thereafter, UPON TRUST to pay the said annuity, yearly rent-charge, or annual sum of £ unto, &c.

Clause to prevent an Annuitant under the Will from parting with his Annuity.

AND my will further is, and I do hereby expressly declare and direct, that in case my said nephew shall alien, sell, assign, incumber, or transfer, or in any manner dispose of or anticipate the said annuity or yearly sum of £ , or any part thereof, then, and in such case, and from and immediately after such alienation, sale, assignment, or transfer, the said bequest so made thereof as aforesaid, and the use and estate so

given to him therein, shall cease and be void, to all intents and purposes, as if the same had not been mentioned in this my will, or as if the said
were naturally dead; and the same, and the funds out of which the same are hereby made payable, shall go and belong to my said next of kin.

WILLS.

*Strict
Limitations.
(Full Form.)*

*Clause authorizing Trustees to enable Sons in Treaty
for a suitable Marriage to make Settlement.*

AND I further desire and direct that if either of my said sons having completed the twenty-first year of his age, shall be in treaty for a marriage becoming his condition, education, and family, and such as shall be fully approved of by my said wife if she be then living, and the other guardian or guardians appointed by this will, and if such guardians shall be then all dead, by the said trustees or trustee for the time being, he may be enabled, notwithstanding he may be under the age of twenty-four, by the said trustees or trustee to make a suitable legal settlement of all or some part of his share of the real or personal property to which he will be entitled under this my will, upon such intended marriage, the terms and provisions of which settlement shall be in his own discretion: provided only that he enters into such bonds and covenants, and executes such reasonable other assurances, as shall be deemed by the said trustees or trustee as aforesaid, sufficient to bind and secure to the persons entitled to any an-

Sons to make a
jointure.

WILLS.

*Strict
Limitations.
(Full Form.)*

nuities or benefits out of or charged upon his said share or division of my testamentary property, the full and regular payment and satisfaction thereof. And it is my will, that upon such marriage, with such consent and at such age as aforesaid, of either of my said sons, he shall have all the benefit and privileges which have hereinbefore been provided for him on his attaining the age of twenty-four; and that the whole property given to him by this my will shall, upon the said annuities and charges being secured as aforesaid, ultimately and absolutely vest in him, discharged of the said contingency of survivorship in the other brother.

*Clause avoiding Provision for the Testator's Wife
if she claim her Jointure.*

Wife claiming
her jointure,
not to take
under the will.

AND I declare my will to be, that if my said wife shall insist upon receiving her jointure of £ per annum, which was settled upon her by our marriage settlement, and secured by way of rent-charge upon some of the hereditaments and premises above devised to my said trustees upon the trusts hereinbefore-mentioned, she shall take no benefit under this my will; but the same, as far as respects any provision for her or disposition in her favour, shall be void and of no manner of effect: and in the event of her attempting to enforce her claims to such jointure or any part thereof, by any of the powers or remedies given to her or her trustees, by the said settlement for that

purpose, I do direct, that in every such case the trustees or trustee for the time being, under this my will, do and shall, instead of paying to my said wife the annuity or annuities hereinbefore provided for her, or any part thereof, make such disposition of the rents and profits of my said estates hereby devised to them, and which they are hereby empowered to receive, as that my eldest son, for whose share the estates charged with the said jointure are hereinbefore intended, may receive a complete indemnification, and the just proportion between my two sons, as to the benefit to be derived to them under this my will, may be equally preserved and maintained.

WILLS.

*Strict
Limitations.
(Full Form.)*

Devise of an Advowson.

AND WHEREAS I am seised of the advowson (1) or right of patronage and presentation of or to the rectory or parish church of _____, in the county of _____, Now I do hereby give and devise the same unto the said (*trustees*) and their heirs, upon the trusts, and for the ends, intents, and purposes following, (that is to say) IN TRUST that they the said (*trustees*) and the survivors or survivor of them, and the heirs, executors, or administrators of such sur-

Devise of an
advowson to
present son of
testator.

(1) Devise of an advowson to a college in an university is Advowson. good ; Bennett Col. v. Bishop of London, 2 Blac. 1182.

WILLS.

*Strict
Limitations.
(Full Form.)*

If son not then
capacitated to
hold,

To present some
other person
during such in-
capacity.

vivor, and their or his assigns, shall and do, upon the death or resignation of the present incumbent, or other avoidance of the said rectory or parish church after my decease, present to the said rectory or church such of my younger sons (being in holy orders and capable of accepting and holding the same) as my said wife during her lifetime, and after her decease, as my said son or such other of my sons as shall for the time being be in possession of my said estates under the limitations of this my will, shall, in writing under her or his hand, desire or request, or recommend to be presented thereto, and do and shall do all such other lawful acts and things as shall or may be requisite for enabling him to hold and enjoy the same ; and on the death or resignation of either of my said younger sons who shall have been so presented, do and shall present some other of my said younger sons so qualified and recommended as aforesaid, to the said rectory or church, to the end and intent that the same church shall and may, so long as the same can or lawfully may, be holden and enjoyed by one of my younger sons. AND my further will is, and I do hereby desire and direct, that in case neither of my said younger sons shall at the time of any such avoidance be qualified or of sufficient age to be presented to the said benefice, or shall on any other account be incapable of taking or holding the same, THEN IN TRUST that they the trustees or trustee shall and do present some other fit or proper person (with the approbation or consent of my said wife or such of

my said sons as aforesaid,) to such vacant church or benefice, To THE INTENT, and under and subject to such condition, trust, and confidence, that the person so presented do and shall hold the same during the continuance of such incapacity of my said son or respective sons, and no longer. And I hereby direct and require my said trustees and trustee to take a sufficient bond or other assurance from the person or respective persons who shall be so presented, for his or their resignation or avoidance of the same church or benefice, when and as soon as any or either of my said younger sons for whom the same shall be designed as aforesaid, shall be capable of taking and holding the same (1). AND UPON FURTHER TRUST, that when all or the last of my said younger sons who shall have been presented, instituted, and inducted to the said church or benefice, or in case no one of them shall take such orders, or be capable of accepting or holding the said church or benefice, then, and in either of the said cases, they the said trustees and trustee shall and do at the request and at the proper costs and charges of my said son or other of my said sons, or other person or persons who for the time being shall be entitled to the immediate freehold of my said

WILLS.

*Strict
Limitations.
(Full Form.)*

And take bond
of resignation.

If no son pre-
sented,

in trust for the
heir at law.

(1) That such a bond of resignation will be good; see 1 Roll. Ab. 417; Babington v. Wood, Cro. Car. 180; Johns v. Lawrence, Cro. Ja. 248. 274; Bp. London v. Fytche, 1 Brow. Ch. Ca. 96.

Bond of resigna-
tion good.

WILLS.**Strict
Limitations.
(Full Form.)**

estates under the limitations of this my will, convey and assure the said advowson or right of patronage, unto and to the use of him my said son, or other person or persons who shall be so entitled as aforesaid, his and their heirs and assigns for ever (1).

Devise of Lands in Mortgage.

Devise of lands
in mortgage to
testator.

AND WHEREAS I am seised of or entitled to various estates in mortgage (2), or subject to re-

Devise of ad-
vowson.

(1) Or the advowson may, instead of the form above given, be devised to trustees for a term of years upon the like trusts, with a declaration that "when the trust of the said term of years shall have been satisfied or discharged by such presentation as aforesaid, and the costs, charges, and expenses attending the execution of the said trust shall have been paid, the said term shall cease and determine."

Mortgage.

(2) A mortgage is in substance a chattel interest, and will pass by a will of the lands which a testator may be possessed of at the time of his death, if the equity of redemption be not previously foreclosed; *Thompson v. Grant*, 4 Mad. 438.

Lands in mort-
gage.

But lands in mortgage to the testator will not pass by a mere general devise of his lands, tenements, and hereditaments, unless such clearly appear to have been his intent; see *Wynn v. Littleton*, 1 Vern. 3; *D. Leeds v. Munday*, 3 Ves. jun. 348; *Attorney-General v. Bowyer*, *ib.* 714; *ex parte Sergison*, 4 *ib.* 147; *Attorney-General v. Buller*, 5 *ib.* 339; *Lord Braybroke v. Inskip*, 8 *ib.* 417; *Co. Lit.* 203, n. (96); or unless the equity of redemption be previously released or foreclosed; *Strode v. Russell*, 2 Vern. 625; 1 Br. P. C. 229; and a decree for an account on a

demption on payment of certain principal sums advanced by me upon the security of the same. Now I give and devise all and every the messuages, lands, tenements, and hereditaments whatsoever, whereof I am so seised or entitled by way of mortgage, with their and every of their appurtenances, and all my estate and interest therein unto my said (*trustees*) their heirs, executors, administrators and assigns (according to the nature of the said respective estates), UPON TRUST and to the intent that they the said (*trustees*) or the survivor of them, or the heirs, executors, or administrators of such survivor, and their or his assigns, do and shall, on payment unto my executors and administrators of such sum and sums of money as shall be due and owing upon or in respect of the said several mortgaged premises, convey, assign,

WILLS.

*Strict
Limitations.
(Full Form.)*

Upon trust to convey on payment of mortgage money.

bill of foreclosure is insufficient, for the estate does not lose the quality of a mortgage until the final order of foreclosure; *Thompson v. Grant*, 4 Madd. 438; but it is holden that general trust estates will, by such a devise, unless rebutted by a contrary intent; *ex parte Morgan*, 10 Ves. jun. 101. To prevent questions, therefore, as to whether it were the intention of the testator or not, it should be expressly so declared.

And it is to be observed, that the bequest of a sum due on mortgage will pass the principal sum only, and not arrears of interest; *Roberts v. Thaffyn*, 2 Atk. 113; see *Marlow v. Smith*, 1 P. Wms. 97, 1 Atk. 605, n.; *Rade v. Reade*, 8 Durnf. and E. 218.

Nor will a devise of lands "subject to the mortgage thereon," Copyholds, exonerate the personal estate; *Ashley v. Earl of Tankerville*, 3 Br. Ch. Rep. 545; which are doctrines the testator ought to be apprized of, that he may provide against them if contrary to his intentions.

WILLS.

*Strict
Limitations.
(Full Form.)*

Such money to
be part of
testator's resi-
duary estate.

and assure the same, with the appurtenances, unto or for the person and persons who at the time of making such respective payments shall be entitled to the equity of redemption thereof, and to his, her, and their heirs, executors, administrators, or assigns, according to the nature of the said premises respectively. AND I do hereby direct that the monies which shall be received for or in respect of the said several mortgages shall be paid and applied by the said trustees or trustee to and for such uses, ends, intents, and purposes as are mentioned and directed in and by this my will of or concerning the residue of my personal estate.

Bequest to an Infant Child.

Bequest to an
infant child.

I GIVE and bequeath unto the infant daughter of , of, &c. , the sum of £ , to be paid within calendar months next after my death, and I do hereby direct that the same may be paid to the said her father, in order that the same may be by him applied for the benefit of his said daughter, in such manner as he may think fit; and I do hereby will and declare that his receipt shall be a sufficient discharge for the same (1).

(1) When a legacy is given by a stranger for the benefit of an infant, and it is desirable that his father should have the disposal of it for that purpose, it should be expressly given or

WILLS.

Directions for allowing Maintenance according to Age.

*Strict
Limitations.
(Full Form.)*

AND I do hereby direct that my said son ,
and in case of his death, such other of my said
sons as, for the time being, shall be entitled to
the immediate freehold of or in my estates herein-
before limited to or for the use of them my said
sons respectively as aforesaid, shall have and be
allowed for his maintenance and education out of
the rents, issues, and annual proceeds of the said
estates, the yearly sum of £ , until he shall
attain the age of years; and from and
after his attaining that age, then the yearly sum
of £ , until he shall attain the age of
years; and from and after his attaining such last-
mentioned age, then the yearly sum of £ ,
until he shall attain the full age of twenty-one
years; the said annuity or yearly sum to com-
mence from the day after my decease, and to be
thenceforth payable and paid either half-yearly or
quarterly, and to be from time to time applied in
and for such means and purposes, and at such
days and times as his or their guardian or guar-
dians shall judge best.

Allowance for
maintenance of
testator's eldest
son, until 21.

directed to be paid to the father, as he cannot otherwise, it
seems, give a discharge for it; see *Dagley v. Talfenny*, 1 P.
Wms. 285; *Phillips v. Paget*, 2 Atk. 8.

WILLS.

*Strict
Limitations.
(Full Form.)*

Bequest of le-
gacy to servant.

Bequests to Servants.

I GIVE and bequeath unto my old servant _____, if he shall be living with me at the time of my decease, the sum of £ _____, to be paid to him within the space of three calendar months next after my decease, with interest for the said sum after the rate of five per cent. per annum (1), from the day of my decease until payment thereof (2); and also an annuity or yearly sum of _____

Rate of interest.

(1) The rate of interest allowed by the court in default of any contrary directions by the testator, is four per cent.; *Pierson v. Garnet*, 2 Brow. Ch. Ca. 37; *Malcolm v. Martin*, 3 *ib.* 53.

When legacies
vested and
carry interest.

(2) Many disputes having arisen between executors and legatees as to the time at which legacies ought to be considered as becoming a vested interest under the testator's will, and also from what time they ought to bear interest, these things should be expressly stated.

As some general guide to a testator in this respect, and that he may know how far the rules of the court may agree with his own intentions, it may be proper to observe, that unless the testator directs at what time the legacy shall be paid, it will not be payable till the end of twelve calendar months after his death, it not being presumed that the testator's personal estate is reduced into possession until one year after his death; *Enticke v. Markland*, 6 Ves. 520; *Bourke v. Ricketts*, 10 *ib.* 333; *Wood v. Penoyre*, 13 *ib.* 383; and until it is payable it will not (although it should sooner become vested) carry interest, unless interest in the mean time be expressly given, or such an intention be strongly implied; *Tyrrell v. Tyrrell*, 4 Ves. 1; *Maxwell v. Wettenhall*, 2 P. Wms. 26; *Laundy v. Williams*, *ib.* 481; *Gibson v. Bott*, 7 *ib.* 96; or unless the legatee be a child of the testator, *Butler v. Freeman*, 3 Atk. 60; *Heath v. Perry*, *ib.* 102; *Cricket v. Dolby*, 3 Ves. jun. 13; *Tyrrell v. Tyrrell*, 4

£ , during the term of his natural life, to commence from the like space of three calendar months next after my decease (1).

WILLS.

*Strict
Limitations.
(Full Form.)*

And of an
annuity.

ib. 1, and born in lawful wedlock, *Beckford v. Tubin*, 1 Ves. 310; *Perry v. Whitehead*, 6 Ves. jun. 544; *Lowndes v. Lowndes*, 15 Ves. 301, as the interest is given for maintenance, and no other maintenance provided for it; *Ellis v. Ellis*, 1 Sch. and Lef. 1; or a grandchild; *Cricket v. Dolby*, 3 Ves. jun. 12; *Hoste v. Pratt*, *ib.* 730; *Greenwell v. Greenwell*, 5 *ib.* 194; in which case it will carry interest from the time of the testator's decease; but the rule does not extend to a nephew, *Cricket v. Dolby*, 3 Ves. jun. 12, nor to the wife of the testator, *Stent v. Robinson*, 12 Ves. 461.

And if the legacy be given to a person payable at a certain age, as twenty-one, and the legatee die before that age, his representatives will not, unless it be otherwise directed, be entitled to it till the time arrive when he would have attained that age had he lived; 4 Ves. jun. 345; but they will then, if it be made to carry interest, be entitled to the accumulations; *Nicholls v. Osborn*, 2 P. Wms. 419; *Butler v. Freeman*, 3 Atk. 59; *Chaworth v. Hooper*, 1 Brow. Ch. Ca. 82; *Hawkins v. Combe*, *ib.* 335; and even in the case of children, interest is not allowed if the legacy be given over on their death before the time of payment, unless the legatee over consent; *Fairman v. Green*, 10 Ves. 48; nor where the legacy is contingent; *Lonax v. Lonax*, 11 *ib.* 48; *ex parte Hobbe*, 11 *ib.* 604; *Errington v. Chapman*, 12 *ib.* 20; *Erratt v. Barlow*, 14 *ib.* 202.

(1) An annuity given by will, if no time of payment be specified, will commence from the decease of the testator, and be payable at the end of twelve calendar months from that time; see *Gibson v. Bott*, 7 Ves. jun. 96. When annuity payable.

WILLS.

 Strict
 Limitations.
 (Full Form.)

 Appointment of
 guardians to
 legitimate chil-
 dren,

Appointment of Guardians to Children.

I do hereby give and bequeath the care and guardianship (1) of my aforesaid children until such of them respectively as are sons shall attain the age of twenty-one years, and until such of them respectively as are daughters shall attain that age, or shall marry, unto my said dear wife, in case she shall so long live and continue my widow; and from and immediately after her decease or future marriage, I do hereby nominate and appoint of, &c. , and the survivor

 Appointment of
 guardians to
 legitimate chil-
 dren.

(1) By the statute of 12 Car. II. c. 24, sects. 8 and 9, it is enacted, "that where any person shall have any child or children under the age of twenty-one years, and not married at the time of his death, it shall be lawful for the father of such child or children born at the time of the death of such father, or being then in *ventre sa mere*, and whether such father be of the age of twenty-one years or not, by deed or will to be executed in the presence of two or more credible witnesses, to dispose of the custody or tuition of such child or children, during such time as he or they shall remain under the age of twenty-one years, to any person or persons in possession or remainder, other than popish recusants;" and "such guardian shall have the custody and management of the lands and hereditaments, and goods, and personal estate of every such child, for his or her benefit, and maintain such actions in relation thereto as by law a guardian in socage may do."

 Mother cannot
 appoint guar-
 dians.

But a mother cannot appoint a testamentary guardian of her children under the statute; *Villareal v. Mellish*, 2 Swans. 536, n.; she has, however, a right to the custody of the person and care of the education of her child, and that notwithstanding a second marriage; see *Evans v. Massey*, 8 Pri. 22.

of them, guardians of my said children (1), until such ages and times respectively as aforesaid; and also guardians of the persons of the said A. B. and C. D. (*natural children*) (2), and of the pro-

WILLS.

Strict
Limitations.
(Full Form.)

and to natural
children.

(1) By the word child in the statute of 12 Car. II. c. 24, above noticed, is to be understood *legitimate* children only, as it has been holden not to extend to such as are so by reputation only; see *Ward v. St. Paul*, 2 Brow. Ch. Ca. 583; such children may, however, if females, be placed under the charge of the reputed father, by virtue of 4 and 5 Phil. and Mar. c. 8; and see Co. Lit. 89 a, n. (14). But a testamentary guardian cannot grant leases of the infant's estate, *Roe dem. Parry v. Hodgson*, 2 Wils. 129. 135, such power should therefore be expressly given him for this purpose, unless it be given to the trustees of the will.

Guardians of
natural child.

(2) Although a father cannot by law appoint a guardian of children who are not born in lawful wedlock, yet the court will generally appoint the person named in the father's will to be guardian, even without reference to the master; 2 Cox, 46. The testator may however direct an application to be made to the court of Chancery, which is the natural guardian of orphans, to appoint a guardian; see *Ward v. St. Paul*, 2 Bro. Ch. Ca. 583; in which case, say,

Application to
be made to the
court of Chan-
cery to appoint
a guardian.

“AND whereas I cannot by law appoint testamentary guardians to the said _____, Now I do hereby desire that the trust of this my will in favour of them my said children may be carried into execution under the direction of his Majesty's High Court of Chancery in Great Britain, and that the said (*trustees*) or some or one of them do within six calendar months next after my decease apply to the court for that purpose, and I do request of the Lord Chancellor, or his Honor the Vice-Chancellor for the time being of the said court, or his Honor the Master of the Rolls, to appoint one of the masters of the said court, or other person or persons whom he or they respectively shall please so to appoint guardian or guardians of the property of my said children respectively, and also the same or other person or

WILLS.

**Strict
Limitations.
(Full Form.)**

perty hereby devised and bequeathed to them respectively, until they shall attain their respective ages of twenty-one years. AND I do hereby direct and request that such guardians or guardian shall and may attend to the education of my said children, and employ proper persons to take care of them, and their persons, estates, education, and fortunes. AND in case of the decease of other of them the said (*guardians*) during the minority of any one or more of my said children (whether born in wedlock or not) then I do hereby will and direct that A. B. of, &c. shall be, and I do hereby appoint him guardian, [or that the survivor of them the said (*guardians*) shall forthwith, or as soon as conveniently can be, by some writing under his hand, do and lawfully may name and appoint some other person to be guardian] of my said children or child who shall then be under the age of twenty-one years, if sons, and unmarried, if daughters, to be and act as guardians of him, her, or them respectively, during their respective minorities, jointly with such survivor (1).

persons, guardian or guardians of the persons of my said children respectively."

**Executors of
guardian.**

(1) As the office of a testamentary guardian will upon his decease devolve upon his executors, 2 P. Wms. 121, it is proper that some provision should be made by the testator for the appointment of a new one to succeed in case of his death.

WILLS.

Devises and Bequests of Residuary Estates and Property.

*Strict
Limitations.
(Full Form.)*

AND as and concerning all and every the rest and residue of my monies, securities for money, and personal estate and effects whatsoever, which shall remain after payment of my debts and funeral expenses, and the legacies hereinbefore given, I give and bequeath the same unto the said (*trustees*) their executors, administrators, and assigns, upon and for the trusts, intents, and purposes hereinafter mentioned (1), (that is to say) UPON TRUST that they the said (*trustees*) or the

Upon trust to
be laid out in
the purchase
of land.

(1) A bequest of the residue carries not only every thing not otherwise disposed of, but what may eventually fall in by lapse, &c.; *Cambridge v. Rous*, 8 Ves. 12; *Brown v. Higgs*, 4 *ib.* 708; or consequences too remote, &c.; *Crooke v. De Vander*, 11 *ib.* 330; *Pratt v. Haddon*, 14 *ib.* 193; *Dawson v. Clarke*, 15 *ib.* 416; *Roberts v. Cooke*, 16 *ib.* 457; he being preferred to every one except the particular legatees, *ibid.* And if the bequest be payable at a future day carries interest, although the legatee does not live to receive the principal; *Sisson v. Shaw*, 9 Ves. 289.

A devise of the residue of personal estate to two persons, is a joint bequest and will survive; *Shore v. Billingsby*, 1 Vern. 482; *Cray v. Willis*, 2 P. Wms. 347; *Webster v. Webster*, *ib.*; *Welling v. Baine*, 3 *ib.* 115; *Joliffe v. East*, 3 Brow. Ch. Ca. 25; unless the death happen in the testator's lifetime; *Bagwell v. Dry*, 1 P. Wms. 700; or there be words creating a tenancy in common; *Peat v. Chapman*, 1 Ves. 543; *Page v. Page*, 2 P. Wms. 488; but if the residuary bequest be revoked as to one legatee, his share will not go to the other, but according to the statute of distributions, *Cheslyn v. Creswell*, 6 Brow. P. C. 1.

WILLS.

*Strict
Limitations.
(Full Form.)*

survivor of them, or the executors or administrators of the survivor, and their and his assigns, do and shall as soon after my decease as conveniently may be, lay out and invest all such the said rest and residue of my personal estate in the purchase of lands and tenements to be situated in that part of Great Britain called England, and not elsewhere, whereof no more than one-fourth part in value shall be leasehold, nor more than one-third part thereof copyhold, free from incumbrances, (except fee-farm, chief rents, and other rents and services); and do and shall convey and settle, or cause and procure to be conveyed and settled, the lands and tenements so to be purchased, to such uses, upon such trusts, and for such ends, intents, and purposes, and with and subject to such powers and provisos as are hereinbefore limited, created, or expressed concerning the messuages, lands, tenements, and hereditaments hereinbefore devised and mentioned to be situated in the parish of aforesaid, or as nearly thereto as the natures and qualities of the said hereditaments, the deaths of persons, and other circumstances will permit. AND in the mean time and until the said residuary part of my personal estate shall be laid out and invested in such purchase or purchases as aforesaid, IN TRUST from time to time to invest or lay out the same or such part or parts thereof as they or he, the said trustees or trustee, shall think fit, in the public stocks or funds of Great Britain, or on parliamentary or real securities at interest,

In the mean
time invest the
same in the
public funds,

with full power for them the said trustees, or trustee from time to time to sell out, call in, assign, transfer, alter, and vary, all or any of the said stocks, funds, and securities, and again to invest the money arising thereby, or coming to their or his hands by means thereof, in or upon new or other stocks, funds, or securities, when and as often as he or they shall see occasion or think fit. AND pay and apply all and every the interests, dividends, and annual proceeds of the said stocks, funds, and securities, to or for such person or persons who for the time being would be entitled to the rents and profits of the messuages, lands, or hereditaments, so hereby directed to be purchased therewith in case the same had actually been purchased and settled in the manner hereinbefore directed. AND as to all my goods, chattels, and personal estate and effects (not consisting of money or securities for money) not hereinbefore specifically bequeathed, I give and bequeath the same unto the said (*trustees*) their executors, administrators, and assigns, UPON TRUST in the first place to pay and satisfy all the just debts and demands which there may be upon or owing by me at the time of my death (together with interest for such of the said debts as shall carry interest), or which may thereafter become due for funeral expenses, or otherwise howsoever; and, in the next place, in payment of the several pecuniary legacies or bequests given or bequeathed by this my will, or by any codicil or codicils thereto; and after full payment and satis-

WILLS.

*Strict
Limitations.
(Full Form.)*

Bequest of residue of trustees' personal estates.

WILLS.

*Strict
Limitations.
(Full Form.)*

faction thereof, then IN TRUST to lay out and invest the surplus or residue thereof in the purchase of three per cent. consolidated bank annuities, in their or his names or name, and from time to time apply the dividends, interest, and annual income or proceeds thereof, as and when the same shall be due and be paid, in the purchase of the same or like annuities, during the minority of my son , and until he shall attain the full age of twenty-one years, or (in case of his decease before that age) until such time or period as he would, if living, have attained that age, and then IN TRUST to pay, assign, and transfer the same unto him my said son , his executors, administrators, and assigns, to and for his and their own use and benefit.

Acquittance of
a debt.

The Gift of a Debt.

AND I give and bequeath, and acquit and release unto the said , one of my executors hereinafter named, the debt or sum of £ owing to me by him on his bond, and I desire the same to be delivered up to him by the other of my executors to be cancelled, provided there shall, without such debt or sum, be sufficient of my personal estate to pay all my just debts and testamentary charges (1).

(1) Testator's forgiving a debt, and desiring the security to be delivered up, is good as against the executors, but not as against

WILLS.

Bequest of Furniture, Books, &c.

*Strict
Limitations.
(Full Form.)*

AND I do hereby give and bequeath to my said wife for her own use and benefit, all my household furniture, plate, linen, china, liquors, provisions, and other household goods and furniture that may be in and about my dwelling-house at the time of my decease, save and except all books, papers, and manuscripts; it being my will and desire, and I do hereby direct, that such of the said books and papers as shall be necessary for settling or elucidating my affairs or concerns, shall be delivered to my executors hereinafter mentioned, and that such of the same books, papers, and manuscripts as shall not be necessary for that

creditors; *Sibthorp v. Moxom*, 3 Atk. 581; *Elliot v. Davenport*, 2 Vern. 521; *Toplis v. Butler*, 1 P. Wms. 86, (n.); and although the debtor die before the testator, it does not lapse, but is a release of the debt.

Legacy given by a debtor to a creditor, if it exceed or be equal to the debt, is a satisfaction of the debt; *Richardson v. Greese*, 3 Atk. 68; *Jeffs v. Wood*, 2 P. Wms. 132; but if smaller, it shall not be taken as a satisfaction *pro tanto*, *Cranmer's Ca. Salk.* 508; *Atkinson v. Webb*, 2 Vern. 478; *Eastwood v. Vinke*, 2 P. Wms. 616, or be less beneficial to the creditor than the debt; *Nicholls v. Judson*, 2 Atk. 300; *Compton v. Sall*, 2 P. Wms. 555; or be, in any respect, of a different nature from the debts; *Clarke v. Sevell*, 3 Atk. 96; *Haynes v. Micox*, 1 Br. Ch. Ca. 129; the rule, though admitted, being disapproved; *Barclay v. Wainwright*, 3 Ves. 466; *Carr v. Eastbrook*, 3 *ibid.* 561; 12 Car. 2.

And so of an annuity; *Goold v. Adams*, Vern. and Scriv. 258.

As to the bequest of a bond by one of joint obligees to the obligor; see *Tyon v. Butler*, 2 Price 74.

WILLS.

*Strict
Limitations.
(Full Form.)*

Other specific
bequests.

purpose, shall be delivered to my said son to be preserved or destroyed, or otherwise disposed of, as he shall think fit. Also I give and bequeath to my said present wife the sum of £ for the purpose of providing mourning for herself and children; and also the sum of £ for mourning for her servants; also I give to my said wife the sum of £ for a ring for herself, and the sum of £ for six mourning-rings, of the value of £ each, for any six persons to whom she may think proper to give them; I give to each of my executors hereinbefore named, the sum of £ for their care and trouble in the execution of this my will; and also to each of them a ring of the value of ; also I give to my servant (for her care and attention to me) the sum of £ , to be paid to her within one month next after my decease.

Bequest of Residue of a Testator's Property to be sold.

Bequest of the
residue of per-
sonal estate to
executors.

AND as to all the rest, residue, and remainder of my personal estate and effects whatsoever, whereof or whereto, I or any person or persons in trust for me, shall at the time of my decease be possessed or entitled, I do hereby give and bequeath the same unto , upon trust, that they the said , my said executors, or the survivors or survivor of them, or the executors

or administrators of such survivor, do and shall with all convenient speed, collect and get in such part thereof as shall consist of money, or securities for money (save only bank annuities), and do and shall convert into money such part thereof as shall not consist of money, or securities for money, and lay out and invest the same, and every part thereof, in their or his own names or name, in the parliamentary stocks or funds of Great Britain, or on real or government securities in England, at interest; and do and shall stand and be possessed of, and interested in all such stocks, funds, or securities, upon the several trusts, and to and for the several ends, intents, and purposes, and with, under, and subject to the several powers and provisos hereinafter declared or expressed concerning the same, that is to say, upon trust, &c.

WILLS.

 Strict
 Limitations.
 (Full Form.)

To convert the same into money, and place it out in the funds, or on government or real securities in England.

Proviso declaring that a Sum given to a Legatee shall be in satisfaction of a Bond.

PROVIDED, and my will is, and I do hereby expressly declare, that the said sum of £ here-
 inbefore given and directed to be laid out for the
 benefit of the children of my said daughter
 by the said her present husband, is by me
 meant and intended, and shall accordingly be
 considered and be accepted, and taken, as and in
 lieu and full satisfaction and recompense of the
 sum of £ , which by a bond executed by
 me previous to the marriage of my said daughter

WILLS.

*Strict
Limitations.
(Full Form.)*

If legatee claim
upon the bond,
legacy to be void.

with her said husband, I have secured to be paid for the benefit of such children. And therefore my will further is, and I do hereby accordingly direct and declare, that in case any claim or demand shall be made, and any proceedings at law or in equity shall be commenced or instituted upon or in respect of the said bond, or the said sum of £ thereby secured, or any part thereof, or any interest to arise therefrom, my said executors and trustees, or the trustees or trustee for the time being, shall forthwith apply to the high court of Chancery for redress against such claim and demand, or adopt such proceedings as they shall be advised to pursue by their counsel for resisting the same; and the expenses of obtaining which opinion of counsel, and of such application to the said court, and of all such other proceedings as shall be advised and adopted as necessary to resist such claim, I do hereby empower and direct my said executors and trustees, to pay and discharge out of my residuary personal estate. AND my will further is, and I do hereby expressly order, that in case any person or persons, for whom or for whose benefit a provision is hereby made, or intended to be made, shall make or prosecute any claim or demand for or in respect of the said bond, or the said sum of £ , or any part thereof, then and from thenceforth such person or persons shall be utterly excluded and debarred from all benefit or provision under or by virtue of this my will, or of the dispositions therein contained.

WILLS.

*Declaration of Trust of Stock for Son for Life, and
then to his Children.*

*Strict
Limitations.
(Full Form.)*

AND as touching such stocks, funds, and securities as shall have been so purchased as aforesaid, I will and declare that the said trustees thereof for the time being, do and shall stand possessed of, and interested in, the same, upon the trusts following, that is to say, upon trust that they or he do and shall pay unto, or empower my said son, (if living) or his assigns to receive the dividends or interest thereof during his natural life, and from and immediately after his decease (or in his lifetime, if he shall so direct, by any such deed or writing as hereinafter is mentioned), do and shall pay or transfer such stocks, funds, or securities unto such one child, or to and amongst such two or more of the children of my said son (other than and except an eldest or only son for the time being) at such age or time, and if more than one, at such ages or times, in such shares and proportions, and in such manner and form as my said son by any deed, &c. shall direct or appoint; and in default of such direction or appointment, then the same shall become vested in such two or more of the children of my said son (other than and besides such eldest or only son) as shall attain the age of twenty-one years, in equal shares, but if there shall be no more than one such child (other than and besides such eldest or only son) who shall attain such age, then one

Trusts of stock.

To permit the son to receive the dividends for life, and after his death to go according to his appointment among his younger children.

WILLS.

*Strict
Limitations.
(Full Form.)*

moiety only thereof shall vest in such child, and the other moiety shall be considered as having vested in my said son, and be paid or transferred accordingly to his executors, administrators, or assigns; and in case there shall be no child of my said son (other than, &c.) who shall attain the said age, then the whole of such stocks, funds, or securities shall be considered as having vested in my said son, and be paid or transferred accordingly to his executors, administrators, or assigns.

*Power for Trustees to expend a Sum in repairing
Premises.*

Trustees em-
powered to
apply sums in
repairing, &c.

PROVIDED, and my will further is, that it shall be lawful for the said trustees or trustee for the time being, at the discretion of them or him my said trustees or trustee, to apply so much of the rents, issues, and profits of the premises comprised in the term, as to them or him shall seem expedient, in or for the purposes of repairing or rebuilding any of the messuages or buildings upon the said farm and lands, or improving the same, or any of them, and also to fell, cut down, and dispose of any of the timber or trees growing or being thereupon, for all or any of the last-mentioned purposes.

WILLS.

Devise of Premises to Trustees for a Term to raise Money for Payment of Debt.

*Strict
Limitations.
(Full Form.)*

AND as to and concerning my said lands and hereditaments at I give and devise the same, with their respective appurtenances, unto and to the use of them the said (*trustees*) their executors, administrators, and assigns, for and during the term of five hundred years, to be computed from the day of my decease, and from thence next ensuing, and fully to be complete and ended, without impeachment of waste; but nevertheless upon and for the trusts, intents, and purposes hereinafter expressed and declared concerning the same term, and as, from, and immediately after the determination of the said term of five hundred years, and in the meantime subject thereunto and to the trusts thereof, unto and to the use of, &c. AND as to, for, and concerning the said term of five hundred years hereinbefore limited to the said (*trustees*) as aforesaid, I will and declare that they the said (*trustees*) their executors, administrators, and assigns, do and shall stand and be possessed of the messuages, lands, and hereditaments comprised therein, upon the trusts following, that is to say, upon trust that they the said trustees or trustee for the time being, do and shall with and out of the respective rents, issues, and profits of the said hereditaments and premises therein comprised, or by mortgage or sale of a competent part of the same premises for all or any part of the said

A term of five hundred years created to make up deficiency of personal estate, if any.

WILLS.

**Strict
Limitations.
(Full Form.)**

term, or by both of those means, raise and levy such sum and sums of money as shall be necessary for paying so much of my debts, legacies, funeral and testamentary charges as my personal estate, not specifically bequeathed, may happen to fall short in payment of, and do and shall apply such money so to be raised in discharge thereof accordingly, and subject thereto, upon trust, &c.

Bequest of Residue for finishing Erections, and invest Surplus in Funds for a Child.

Residue to be applied in finishing buildings.

AND as to all my goods, chattels, and personal estate, not by this my will specifically disposed of, I give the same unto them the said and

their executors, administrators, and assigns, upon trust, in the first place to pay there-out all my just debts, (including all such ground-rents and premiums of insurance as may be owing from me at the time of my death) and my funeral and testamentary charges; and in the next place, the pecuniary legacies given by this my will; and after making all such payments, to lay out so much of the residue as may be necessary in finishing any messuages or other buildings which may happen to be building by me on the said vacant ground at the time of my death; and to lay out the surplus, if any, in the purchase of three per cent. consolidated bank annuities, in the names of them the said trustees, or the survivors or sur-

Surplus for benefit of a son.

vivor of them, or the executors or administrators of such survivor; and as to such bank annuities, I will and direct that they the said trustees or trustee thereof for the time being, do and shall place out the dividends or interest arising thereupon, from time to time, until my said son shall attain the age of twenty-one years, (or in case he shall die before that age, until the period shall arrive when he would, if living, have attained that age) in the purchase of like annuities, so as to cause as great an accumulation of stock as may be; and when and so soon as my said son shall attain the said age, or the period shall arrive when he would, if living, have attained that age, then to transfer one third part of such bank annuities as shall have been so purchased as aforesaid, unto my said son , his executors or administrators; one other third part unto my said son , his executors or administrators; and one other third part unto my said daughter , her executors or administrators.

WILLS.

*Strict
Limitations.
(Full Form.)*

WILLS.

Strict
Limitations.
(Full Form.)

Accumulation
act.

*Abstract of 39 and 40 Geo. III. c. 98, usually
called the Accumulation Act.*

THE act recites that it is expedient that all dispositions of real or personal estates, whereby the profits and produce thereof are directed to be accumulated, and the beneficial enjoyment thereof is postponed, should be made subject to the restrictions hereinafter contained, it is therefore enacted :

No person by deed or will to settle or dispose of any property so that the rents or produce shall accumulate longer than lives in being, &c.

Sect. 1. That no person or persons shall, after the passing of the act, by any deed or deeds, surrender or surrenders, will, codicil, or otherwise howsoever, settle or dispose of any real or personal property, so that and in such manner that the rents, issues, profits, or produce thereof, shall be wholly or partially accumulated for any longer term than the life or lives of any such grantor or grantors, settler or settlers, or the term of twenty-one years from the death of any such grantor, settler, deviser, or testator, or during the minority or respective minorities of any person or persons who shall be living, or in *ventre sa mere* at the time of the death of such grantor, deviser, or testator, or during the minority or respective minorities only of any person or persons who, under the uses or trusts of the deed, surrender, will, or other assurances, directing such accumulations, would, for the time being, if of full age, be entitled unto the rents, issues, and profits, or the interest, dividends, or annual produce so directed

to be accumulated; and in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits, and produce of such property so directed to be accumulated shall, so long as the same shall be directed to be accumulated contrary to the provisions of this act, go to and be received by such person or persons as would have been entitled thereto, if such accumulation had not been directed.

WILLS.

*Strict
Limitations.
(Full Form.)*

Sect. 2. That nothing in the act shall extend to any provision for payment of debts of any grantor, settler, or deviser, or other person or persons, or to any provision for raising portions for any child or children of any grantor, settler, or deviser, or any child or children of any person taking any interest under any such conveyance, settlement, or devise, or to any direction touching the produce of timber or wood upon any lands or tenements, but that all such provisions and directions may be made and given as if the act had not passed.

Act not to extend to provision for payment of debts, or raising portions, or the produce of timber.

Nor (sect. 3) shall the act extend to Scotland.

Scotland.

Nor (sect. 4) to wills made before the passing the act, unless the testator be living.

WILLS.

*Small Estates
and Property in
Trade.*

No. II.

A Will of Real and Personal Estates, adapted more particularly to the Circumstances of a Merchant or Person in Trade.

With Variations including a variety of common Bequests and Provisions.

Directions for
burial.

Bequest of
furniture and
legacy to wife.

Bequest of
legacies.

THIS IS THE LAST WILL AND TESTAMENT of me (*the testator*) of, &c. , I desire that my body may be interred at without any unnecessary pomp or expense, or at such other place as my executors may think convenient and proper for that purpose. In the first place I give, devise, and bequeath all and singular the household furniture, books, linen, wearing and other apparel, plate, china, glass, wines, liquors, and other the goods and effects of a like sort or kind, which I shall be possessed of at the time of my decease, unto my dear wife, her executors, administrators, and assigns, absolutely to and for her own proper use and benefit and disposal. AND I also give and bequeath unto my said dear wife, the sum of £ , to be paid unto her within three calendar months next after my decease. I also give and bequeath unto, &c. &c. (*legatees*), the sum of

£ , &c. AND for the purpose of paying the said several legacies and other the purposes hereinafter mentioned, I do will and direct that my executors hereinafter named, shall, as soon as may be after my decease, call in and compel payment of all such parts of my personal estate and effects as shall consist of money out upon security, at interest, or otherwise, (except only money in the public funds) and also collect and get in all book and other debts which shall be owing to me at the time of my decease, in such manner as they shall think fit; and I do hereby authorise and empower them my said executors, and the survivor of them, his executors and administrators, to compromise or compound, or submit to arbitration, any debt, sum, or sums of money which may be owing, or appear to be owing to me at the time of my decease, and give or allow such reasonable time, by way of indulgence, for the payment of the same or any part thereof, and in the mean time to take and accept such security or assurance for the payment thereof, as they or he in their or his discretion shall think fit; and the receipt or receipts of them or him for all monies paid or securities given, under or by virtue of this my will shall in all cases be a sufficient and effectual discharge and discharges for such sum or sums of money as shall therein respectively be expressed or acknowledged to have been received or given, and the person or persons paying any such debt or debts, or sum or sums of money, his, her, or their heirs, executors, or administrators,

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*Executors to
collect in debts,
&c.*

*With powers to
compound, &c.*

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and Property in
Trade.*

Executors to
apply personal
estate in pay-
ment of debts
and legacies.

Residue upon
trusts after
mentioned.

General devise
of real and
personal prop-
erty to
trustees.

shall not afterwards be obliged to see to the application thereof, or be in any manner answerable or accountable for the loss, misapplication, or non-application of the same, or any part thereof. AND it is my will and desire, and I do hereby declare and direct, that they my said executors and the survivor of them, and the executors and administrators of such survivor, shall stand and be possessed of the monies to arise or be gotten in by the means aforesaid, or otherwise under or by virtue of this my will, IN TRUST in the first place, to satisfy and discharge all such debts as shall be due and owing by me to any person or persons whomsoever, by specialty, simple contract, or otherwise howsoever, at the time of my decease, or which shall afterwards accrue due, and interest for such of the said debts as shall, or in his or their opinion ought to carry interest, with full and absolute power to admit or reject evidences of any alleged debt or debts, as to them or him shall seem just; and in the next place to pay, satisfy, and discharge my funeral expenses, and the several legacies and bequests given or bequeathed by this my will, or by any codicil or codicils thereto; and after payment and satisfaction thereof, IN TRUST to stand possessed of and interested in the residue of my said estate and effects, for the intents and purposes hereinafter declared of or concerning the money to arise by the sale of such parts of my real estates as are hereinafter directed to be sold. AND as to and concerning all and singular other the property,

whether real or personal, or of whatever other nature or kind the same may be, which I shall be seised of, or over which I shall have a disposing power at the time of my decease, I give, devise, and bequeath the same respectively, and every part thereof, unto (*trustees*) of, &c. their

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heirs, executors, and administrators, according to the natures of the said estates and property respectively, UPON the several TRUSTS, and to and for the several ends, intents, and purposes hereinafter declared of or concerning the same, that is to say, In case my said wife, with the advice and approbation of my said trustees and executors, or any two of them, if there shall be more than two, shall deem it expedient, or desire to carry on the trade or business in which I may be engaged at the time of my decease, then and in such case UPON TRUST that they the said (*trustees*) or the survivors and survivor of them, or the heirs, executors, or administrators of the last survivor, do and shall, by and out of my real and personal estates, property, and effects so hereby devised and bequeathed to them as aforesaid, or by such other ways and means as to them, or any two of them, (there being then more than two) shall seem best, raise and pay, to or for the use or benefit of her my said wife, either at one time or at different times, and in such manner as to them may seem requisite or expedient, the sum of £ , (including the appraised value of my stock in trade) for the purpose of enabling her my said wife to carry on the said trade or business; and

Upon trust to raise a sum to enable wife to carry on the trade.

To permit wife to reside in house.

WILLS.

*Small Estates
and Property in
Trade.*

Profits of trade
for support of
wife and
children.

do and shall, for the same end and purpose, permit and suffer, and authorise and empower my said wife to use, occupy, and enjoy, for and during such time as she shall carry on the said trade or business and continue my widow, all such messuages, houses, warehouses, yards, buildings, and premises, as at the time of my decease, shall be holden or used by me for carrying on the same, or otherwise in relation thereunto. AND I do hereby declare it to be my will and meaning, and do accordingly direct that the said trade or business, if carried on by my said wife, shall be so carried on, and the profits and proceeds thereof be received and retained by her for the support of herself, and the maintenance and education of my children during their respective minorities(1).

(1) If the testator be in partnership, and it be part of the terms of the articles that the copartnership shall not be dissolved by the death of either party, but that his executors shall carry on the trade in conjunction with the surviving partner, it will be proper to insert the following provision :

Executors to
dissolve part-
nership.

“AND WHEREAS I now carry on the business of in conjunction with under or by virtue of certain articles of copartnership, bearing date, &c. whereby it is provided that the said copartnership shall not be dissolved by the death of either of the said copartners, now I do hereby expressly declare, that it shall be lawful that my executors, if they should think fit, to alter or rescind, in conjunction with my said partner, all and every or any of the covenants, clauses, declarations, or agreements in said articles contained, or absolutely to dissolve and put an end to said copartnership, without being in anywise answerable or accountable for so doing.” (See 47 Geo. III. s. 2, c. 74.)

AND UPON THIS FURTHER TRUST, that in case it shall not be thought advisable for my said wife to carry on the said trade or business after my decease, or in case after trial thereof, it shall be thought expedient that she should discontinue to carry on the same, or in case of her second marriage, then and in either of the said cases that they the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, and administrators of the last survivor, do and shall, with all convenient speed after my decease, or after such relinquishment or discontinuance of the said trade, or second marriage of my said wife as aforesaid, as the case may be, sell and dispose of my said trade or business, and of the good will thereof, and convey all and every the said messuages, warehouses, buildings, and premises so employed in or about the same in the manner hereinafter directed. AND UPON FURTHER TRUST, that they the said (*trustees*) and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, shall and do, as soon as conveniently may be after my decease, sell and dispose of all and every the rest and residue of my freehold, copyhold, and leasehold estates, and other property of a saleable nature, either together and in one lot, or in parcels or several lots, and either by public sale or private contract, as they or he the said trustees or trustee shall think best; and also make, execute, and perfect all necessary or proper deeds, writings, conveyances, surrenders, and assurances for the purpose of

WILLS.

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and Property in
Trade.*

If wife decline
to carry on the
business.

Trustees to sell
same for pur-
poses after
mentioned.

Trustees also
to sell other of
testator's real
estates.

WILLS.

*Small Estates
and Property in
Trade.*

And invest the
purchase money
on government
or other secu-
rities.

vesting the same in any purchaser or purchasers thereof, or in such person or persons, and for such uses, intents, and purposes as he or they shall direct or appoint; and I hereby declare and direct, that the receipt or receipts of the said trustees or trustee, or of the acting or only acting trustees or trustee of this my will for the time being, shall be a good, valid, and sufficient acquittance and discharge, or good, valid, and sufficient acquittances and discharges to the purchaser or purchasers of the said estates, or of any part thereof, for all or any part of the money which shall be by them or him paid for the same, or so much thereof as in such receipt or receipts shall be acknowledged to be received; and that no such purchaser or purchasers after paying his, her, or their said purchase-money to the said trustees or trustee, or to his or their order, shall be answerable for the application, or in any respects accountable for or by reason of the mis-application or non-application of the same, or any part thereof. AND I do hereby further will and direct, that they the said (*trustees*) and the survivors and survivor of them, and the executors and administrators of the survivor, do and shall at all times, and from time to time, stand possessed of and interested in the money to arise by every or any such sale or sales, and also of and in the rest and residue of my personal estates and effects, after payment of debts and legacies, and the charges and expenses of executing the trusts of this my will, IN TRUST to lay out and invest the

same in the purchase of parliamentary stock or funds of Great Britain, or upon real securities at interest, in the names of them the said trustees for the time being, and do and shall alter, change, and vary the same as and when they shall think fit; and do and shall stand possessed of and interested in the said stocks, funds, and securities upon the trusts, and for the ends, intents, and purposes, and with, under, and subject to the several powers, provisos, conditions, and declarations hereinafter declared or expressed concerning the same, (that is to say) IN TRUST to pay, apply, and dispose of the interest, dividends, and other annual proceeds thereof, and of the rents, issues, and annual proceeds of my said estates and effects hereby directed to be sold, until such sale and investment as aforesaid shall be made, unto such person or persons, and for such ends, intents, and purposes as my said dear wife, so long as she shall continue my widow, shall at any time or times, and from time to time, by any note in writing under her hand, direct or appoint the same, or any part thereof, to be paid or applied; and in default of any such direction or appointment, and as to so much of the said dividends, interest, rents, issues, and proceeds respectively of which none shall be made, IN TRUST to pay the same into the proper hands of my said dear wife or her assigns, or otherwise permit and authorise her and them to receive, take, and retain the same, without account or control, during such time as she shall continue my widow, to and for the use,

WILLS.

*Small Estates
and Property in
Trade.*

And pay the dividends and interest to wife for support of herself and children until a child attain twenty-one.

WILLS.

*Small Estates
and Property in
Trade.*

On each child
attaining twenty-one or marriage, to pay a
portion to him
or her.

benefit, and support of herself, and the maintenance, support, and education of such of my dear children hereinbefore named, and such other my children, if any, as shall be living at the time of my death, or be born in due time thereafter; such payment unto or receipt by my said wife, to be and continue until some one of my said children, being a son, shall have attained the age of twenty-one years, or being a daughter, shall have attained that age or be married, with the consent of my said wife; and the receipt and receipts of my said wife shall, until such period, be a good and effectual discharge, and good and effectual discharges for all and every the dividends, interests, proceeds, and payments aforesaid. AND from and immediately after any one of my said children (if there shall be more than one), who being a son, shall have attained his age of twenty-one years, or have died before that age leaving lawful issue, or being a daughter, shall have attained that age or be married, with such consent as aforesaid, then as to, for, and concerning two full third parts of the produce or value of my said estates, property, and effects, both real and personal (the whole into three parts being divided), after payment of just debts, legacies, and expenses, IN TRUST to pay, assign, transfer, and assure one due proportionate and equal part or share of such two-thirds, the same being divided into as many equal parts or shares as there may be in number of my said children then living, or who shall have died leaving issue then living, unto, and to and for the

proper and absolute use and disposal of such child so attaining the said age of twenty-one years, if a son, or to and for the benefit of his lawful issue if he shall have departed this life before that age leaving issue, or so attaining the said age of twenty-one years, or being married, if a daughter. AND after payment thereof, then IN TRUST to pay, apply, and dispose of the interests, dividends, and proceeds of all and every the residue of the said estates and effects, funds and securities (after deducting such one proportionate part or share as aforesaid), unto my said dear wife or her assigns, or otherwise permit and empower her and them to receive the same for the maintenance and support of herself and all the others or other, if but one, of my said children who shall not have attained the said age of twenty-one years, being a son or sons, or have attained that age or be married, being a daughter or daughters, until some other or such one other of my said children, who being a son, shall attain the age of twenty-one years, or die before that age leaving lawful issue, or being a daughter, shall attain that age, or marry with such consent as aforesaid; and after such child being a son, shall so attain that age, or being a daughter shall attain the like age or be married with such consent as aforesaid, THEN IN TRUST to pay, assign, transfer, or assure one other like due proportionate and equal part or share as aforesaid, unto such other child so next attaining the age of twenty-one years, being a son, or his lawful issue if he shall have departed this life

WILLS.

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and Property in
Trade.*

WILLS.

*Small Estates
and Property in
Trade.*

If only one
child, a moiety
to be paid to
him or her.

before that age, leaving issue, or being a daughter, shall have attained that age, or be married with such consent as aforesaid; AND so in like manner from time to time, to pay, assign, transfer, or assure unto all and each of my said children, and the lawful issue of such one or more of them as shall be a son or sons, and shall depart this life before the age of twenty-one years leaving lawful issue, one due proportionate and equal part or share of such two-third parts of my said property, funds, and securities, as and when he, she, or they shall respectively attain his, her, or their ages, days, or times aforesaid; AND in case there should be only one of my said children, who being a son, shall live to attain the age of twenty-one years, or die before that age leaving lawful issue, or being a daughter, shall live to attain that age, or marry with such consent as aforesaid, then IN TRUST that they my said trustees, or the survivor of them, or the executors or administrators of the survivor, do and shall pay, assign, transfer, or assure one full and equal moiety or half part (the whole into two equal parts being divided) of all and singular my said estates and effects, funds and securities, unto such one or only child who, being a son, shall attain the said age of 21 years, or depart this life before that age, leaving lawful issue, or who, being a daughter, shall live to attain the like age and be married, at or upon her so attaining the said age or being married, being a daughter, or attaining such age, or departing this life before that age, leaving lawful issue, being a

son; AND as, to, for, and concerning the other or remaining moiety or half part, in case there shall be only one of my said children who, being a son, shall live to attain the age of twenty-one years, or die before that age, leaving lawful issue, or being a daughter, shall live to attain that age, or be married, with such consent as aforesaid, or the remaining one-third part, in case there shall be more than one of such children, of and in my said estates and effects, IN TRUST to pay, apply, assign, convey, and assure the same, and the funds and securities whereupon the same may be placed, unto or in trust for my said dear wife, or otherwise permit and empower her and them to take, receive, and retain the same, and the dividends, interests, and annual proceeds thereof, to and for her and their own proper use and benefit, during the term of her natural life. AND I do hereby declare, that the provision hereby made for my said wife, is intended to be in lieu, bar, and full satisfaction of and for all dower and thirds at the common law, or by custom, or otherwise, which she, my said wife, can or may have, claim, or be entitled to, in or out of all or any of the manors, messuages, lands, tenements, hereditaments, or other property whatsoever, whereof I now am, or at any time after my decease shall or may be seised, possessed of, or entitled to for any estate of inheritance in possession, or for any other dowerable estate or interest (1). AND from and imme-

WILLS.

*Small Estates
and Property in
Trade.*

*Remaining
moiety to wife.*

*Provision for
wife to be in
lieu of dower.*

*After wife's
death, to such
children as she
shall appoint.*

(1) A woman will not be barred of her dower by a provision

WILLS.

*Small Estates
and Property in
Trade.*

Power to
change securi-
ties.

diately after the decease of my said wife, it is my will and intent, and I do hereby direct and declare, that my said trustees or trustee for the time being shall stand possessed of and interested in all and singular the said trust-monies, and the funds and securities whereupon the same shall be placed or invested, IN TRUST, &c. [*To the testator's children as wife shall appoint, and in default of appointment to them equally or otherwise, as the testator may wish*(1).] PROVIDED ALSO, and I do hereby further declare and direct, that it shall be lawful for the trustees for the time being, of this my will, or any two of them, at any time, and from time to time, when and as often as they shall think it expedient or advisable, with such consent as aforesaid of my said wife, if living and remaining unmarried, and after her decease or second marriage, then of the proper authority of such trustees, to sell, transfer, and dispose of, or change and vary all or any of the funds and securities whereupon the said trust-monies shall be then laid out or invested, so that, and UPON TRUST that they lay out and invest the money to arise by any such sale, transfer, or

made by will unless there be a clear indication of the testator's intention that she should be, or unless some other part of the disposition of his property would be defeated by her taking both: and the testator having given all his real and personal estate on trust in the first place to pay such provision to the wife, was held not of itself a sufficient indication of such intention; *Thompson v. Nelson*, 1 Cox, 447; hence the propriety of the testator expressly declaring his intention in this respect.

(1) See *ante*, p. 509.

disposition, in the purchase of other, or the same, or like stocks or funds, or in or upon government or real securities, in the joint names of all my said trustees for the time being, which said new or other stocks, funds, and securities, and the interest, dividends, and annual produce thereof respectively, shall be and remain applicable and applied to and for, and upon such and the same trusts, ends, intents, and purposes as the original or former stocks, funds, and securities, and the dividends and interest thereof were respectively subject to and applicable at the time of such sale, transfer, or disposition of the same. PROVIDED ALSO, and it is my further will, that in case there shall be no child living at the time of the decease or second marriage of my said wife, or being such, if every of them being a son or sons, shall depart this life under the age of twenty-one years without leaving lawful issue, or being a daughter or daughters, shall depart this life under that age and unmarried, then I do hereby will and direct, that they my said (*trustees*) and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, shall stand seised and be possessed, as well of such part of my real estates as shall not have been sold or disposed of, as also of the monies which shall have been produced or have arisen by the sale or sales of such parts thereof as shall have been so sold, and the funds and securities upon which the same shall be invested, and the accumulated interest thereof, if any, IN TRUST for my next of kin, under and ac-

WILLS.

*Small Estates
and Property in
Trade.*

If no child, in
trust for testa-
tor's next of
kin.

WILLS.

*Small Estates
and Property in
Trade.*

Appointment of
executors and
guardians.

Testator's sons
to be allowed
to go to the
universities.

According to the statute relative to the distribution of the estate and effects of persons dying intestate, the whole thereof being considered as personal and not as real estate, and to be paid, assigned, divided, and distributed accordingly. AND lastly, I hereby appoint my said dear wife, during such time as she shall continue my widow, and the said (*trustees*), executrix and executors of this my will (1), and guardians of the persons and fortunes of my said children, in all things during their respective minorities, save only that I hereby desire that all, any, or either of my said sons may be allowed to pursue one of the three learned professions of divinity, law, or physic, at his election, and to be fixed as a student in one of the Universities of England or Scotland; and in such case I request my trustees or trustee for the time being, to advance and pay over and above such allowance as aforesaid to each of them my said sons, the gross sum of £ , in order to enable him or them to purchase a competent collection of books, which sum of money I request the said guardians

(1) An executor will not be allowed any thing on account of his time and trouble in his executorship, even if he be required to carry on the testator's trade; *Burden v. Burden*, 16 Ves. 170; where, therefore, it is intended that he should have an allowance, it must be expressly provided for in the will; and see *Webb v. Shaftsbury*, 7 Ves. 480; nor if the testator be in insolvent circumstances, will the executor be allowed his costs in actions commenced against him, as he is in other cases, for he need not have administered; *Adair v. Shaw*, 1 Sch. and Lef. 260.

of my said children to see laid out in the purchase of such books only as are proper and safe to be perused and studied by them. AND I declare it to be my will, that my said sons as and when they shall have severally attained the age of years, shall respectively become entitled to receive the entire rents, profits, and proceeds of their respective shares of the said trust property to which they will be entitled under or by virtue of this my will, subject and without prejudice to the charges and trusts hereinbefore mentioned; AND I do hereby direct, that as and when my said sons shall severally have completed the said age of years, they the said (*trustees*) or the survivor of them, or the heirs, executors, or administrators of such survivor, shall convey, assign, transfer, and make over by proper and effectual conveyances, transfers, payments, and assurances in the law, to such of my said sons as shall have so completed the year of his age, all the legal estate and interest of and in his share or surplus of my said real and personal property, estate, and effects remaining after the discharge of the aforesaid trusts, and payment and satisfaction of the said several charges, and allowances in the manner hereinbefore mentioned. AND I do hereby declare my will to be, that it shall and may be lawful to and for my said wife and the said (*trustees*), and also to and for my said two eldest sons, when they shall severally become entitled to prove, and shall have proved, this my will, and the survivors or survivor of them, and the executors or admini-

WILLS.

*Small Estates
and Property in
Trade.*

Testator's sons
on attaining 21
to be entitled
to rents, &c.

Their shares in
testator's estates
to be conveyed
to them at 21.

Power to the
trustees to renew
the lease of the
testator's dwell-
ing house, or to
purchase other
premises, with
full discretion-
ary powers for
managing the
trade.

WILLS.

*Small Estates
and Property in
Trade.*

strators of such survivor, from time to time, if need be, to renew the lease of my dwelling-house and premises wherein the said trade or business is now carried on, or to purchase the fee-simple thereof, or of any undivided part or share thereof, or to take any other dwelling-house, shop or shops, warehouse or warehouses, or other premises, at such rent or rents as they shall think proper, for the purpose of carrying on the said trade or business, and to hire and employ any servant or servants, clerk or clerks, or any other person or persons whomsoever, to be employed therein, at such salary or wages as they, my said trustees and executors for the time being shall think proper, and to repose in such servant or servants, clerk or clerks, or other person or persons, so much and such confidence, trust, power, or authority, in the conducting and carrying on of the same trade or business, and in the management, care, and disposal of the stock employed or to be employed therein, and in the receipt of any debt or debts to be contracted, in or by the carrying on the trade hereby directed to be carried on, as they my said trustees, or the survivors or survivor, shall in his, her, or their discretion think fit, provided that after any or either of my said sons shall become partners or partner in the said trade or business, such of them as for the time being shall be partners or partner therein, shall have a voice therein, as well as my trustees and executors for the time being, so as that in case of a difference in opinion, the majority of voices shall decide as hereinafter

is mentioned; and also to adjust, settle, compromise, and compound all accounts, reckonings, transactions, matters, and things, in which I shall be concerned or interested at the time of my decease, or which shall be opened or contracted, or shall arise after my decease, and to pay, on any evidences they shall think proper, any debts claimed from my estate, and also to dismiss any such servant or servants, clerk or clerks, or other person or persons; and (with such consent as aforesaid) to hire and employ any other or others in his or their stead, and that from time to time and as often as my said executors shall think proper. And I do hereby will, direct, and declare, that in all cases where my trustees and executors for the time being shall happen to differ in opinion, the matter of such difference shall be decided by the major part or number of them my said trustees and executors, and be acted upon accordingly. AND I do hereby declare my will to be, that they my said executors, and their respective executors and administrators, shall not be answerable or accountable for any loss or damage which shall come or happen to the stock or capital to be employed in the said trade or business, by bad debts, decay of goods, suit or action, or suits or actions, in any court or courts of law or equity, or any other casualties or accidents whatsoever, or by reason of the trust and confidence which they, or any of them, shall or may place or repose in any servant or servants, clerk or clerks, banker, broker, or other persons with

WILLS.

*Small Estates
and Property in
Trade.*

If the trustees
and executors
differ in opinion,
the matter in
difference to be
decided by the
majority.

WILLS.

*Small Estates
and Property in
Trade.*

whom any part of the said trust-monies shall or may be deposited or lodged for safe custody, or otherwise, or for any other loss or damage which may happen about the execution of this my will, or all or any of the trusts hereby in them reposed; and that they my said trustees and executors, and their respective executors and administrators, shall not be charged or chargeable with or for any sum or sums of money, other than such as shall actually and respectively come to his, her, or their hands by virtue of this my will.
IN WITNESS, &c. (1).

Attestation, &c. (1) For the mode of publication, attestation, &c. see INTRODUCTION (*ante* next after p. 696).

WILLS.

*By Feme Covert
or Person under
a Power.*

No. III.

The Will or Testamentary Disposition of a Feme Covert (or other Person) in pursuance of a Power (1) of Freehold Property.

Variations where the Property is Leasehold.

Where Money in the Funds, &c.

Also where the Will is in execution of a Power to charge an Estate with the Payment of a Sum of Money.

Where it is by a Feme Covert solely by the Assent of her Husband.

THIS IS THE LAST WILL AND TESTAMENT or testamentary writing {or testamentary appointment}

(1) A feme covert may, with the consent of her husband, dispose by will of the whole or any part of her personal estate, notwithstanding the statute of 34 Hen. 8, see *Marriot v. Kinsman*, Cro. Car. 219; *Ross v. Ewer*, 3 Atk. 160; *Rich v. Cockell*, 9 Ves. jun. 369, provided she be of the age of twelve years, Co. Lit. 89, b. n. (6), as she may also without such consent, if by an agreement before marriage she have the en-

Will by feme
covert.

WILLS.

*By Feme Covert,
or Person under
a Power.*

of me (*the testatrix or testator*), WHEREAS by indentures of lease and release bearing date respec-

joyment of the property as a feme sole; *Fettiplace v. Gorges*, 1 Ves. jun. 46; 3 Brow. Ch. Ca. 8, S. C.; *Gore v. Knight*, 2 Vern. 535; *Stone v. Forsyth*, 2 Doug. 707; *Scammell v. Wilkinson*, 2 East, 552; *Rich v. Cockell*, 9 Ves. jun. 369; and a similar power may be given to her over her real estates, whether before or after marriage, *Wright v. Cadogan*, 1 Brow. Par. Ca. 486. But it is to be observed, that the assent of a husband after marriage to his wife's making a will, extends only to such property as she possessed at the time of the marriage, and not to such as may have since descended to her, unless the power expressly extend to estates subsequently coming to her, 2 Ves. 190. And it also seems that a feme covert may exercise a power of appointment of land by a testamentary instrument, notwithstanding her coverture; see *Rich v. Beaumont*, 6 Brow. Par. Ca. 152; *Burdet v. Man*, 1 Ves. 159, provided she is of age; *Neale v. Greenbank*, 1 Ves. 298; and so also of property which she holds in autre droit, as executrix or the like; *Scammell v. Wilkinson*, 2 East, 552; and see INTRODUCTION TO "WILLS," *ante*, next after p. 696.

Leaseholds.

(1) If the subject be leaseholds, say,

"WHEREAS by an indenture of assignment by way of settlement, bearing date the day of , which was in the year , and made or expressed to be made between, &c. the messuages or tenements and premises hereinafter described, were assigned unto (*the trustees*) of, &c. , their executors, administrators, and assigns, UPON TRUST in case of failure of issue of the said then intended marriage, to assign and transfer the same unto such person and persons, and for such term or number of years, not exceeding the then residue of the said term of years, and in such parts, shares, and proportions, and in such manner and form, and for such ends, intents, and purposes as I, the said (*testatrix*) at any time or times, and either

tively (1) the days of , which was in the year
; the release being of parts, and made be-

WILLS.

*By Feme Covert,
or Person under
a Power.*

before or after the failure of such issue, and whether I should be covert or sole, and notwithstanding my then intended or any future coverture, by my last will and testament in writing, or any writing in the nature of or purporting to be my last will and testament, or any codicil or codicils thereto, to be respectively by me signed and published in the presence of and attested by or more credible witnesses, should direct or appoint, or give or devise the same. Now," &c. *as above.*

A direct reference to the power is not however necessary in order to the validity of its execution by will, but the will must so point or apply to the subject of the power as to render it certain that it was the intention of the testator to exercise the power; see *Andrews v. Emmott*, 2 Brow. Ch. Rep. 297; *Langham v. Nenny*, 3 Ves. jun. 467; *Crot v. Slee*, 4 *ib.* 63; *Bennett v. Aburrow*, 8 *ib.* 609.

Reference to
power not es-
sential.

If the subject be paraphernalia, &c. say,

Paraphernalia.

"AND WHEREAS under or by virtue of an indenture of settlement bearing date the day of , and made between, &c. I am enabled and empowered by my last will and testament in writing, or any codicil or codicils thereto, or any writing purporting to be or being in the nature of my last will and testament, or of a codicil or codicils thereto, to be by me signed and published in the presence of and attested by three or more credible persons, to give and dispose of my jewels, watches, rings, necklaces, trinkets, and ornaments of my person, and other my paraphernalia whatsoever, to any person or persons whomsoever, without any hindrance, interruption or interference of the said (*husband*) my said husband, his executors, administrators, or assigns, or any other person or persons by or with his or their consent or permission. Now," &c. *as above.*

WILLS.

By Feme Covert,
or Person under
a Power.

Devise or ap-
pointment of
lands to trus-
tees.

tween, &c. , the messuages or tenements, lands, hereditaments, and premises hereinafter described, were conveyed and assured unto (*the trustees*) of, &c. their heirs and assigns, TO THE USE (in default of issue of the marriage,) of such person or persons, for such estate or estates, interest or interests, and to and for such ends, intents, and purposes, and upon such trusts, and charged and chargeable in such manner, and subject to such powers of revocation and new appointment, and other powers, provisos, declarations, and agreements as I, from time to time, or at any time or times during and notwithstanding my then intended or any future coverture, and whether I should be sole or married, by my last will and testament in writing, or any writing in the nature of or purporting to be my last will and testament, or any codicil or codicils thereto, to be respectively by me signed, sealed, and published in the presence of and attested by three or more credible witnesses, should from time to time limit, direct, or appoint, or give or devise the same. Now in exercise and execution of the power or authority so given or reserved to me as aforesaid, and of every or any other power and authority enabling me in this behalf, I the said (*testatrix*) by this my last will and testament or testamentary writing, signed, sealed, and published by me in the presence of three credible persons (whose names are or are intended to be hereunto subscribed as witnesses attesting the same) do give, devise, and

bequeath (1), and limit, direct, and appoint that all and singular the several messuages or tenements, lands and hereditaments, situated and being in, &c. and now in the tenure or occupation of _____, with the lands and appurtenances to

WILLS.

By Feme Covert,
or Person under
a Power.

(1) If the subject be leaseholds, say,

Leaseholds.

“Do give and bequeath, and direct and appoint that all and singular my leasehold messuages, or tenements and premises (*describe them*) shall be and remain unto,” &c.

If the bequest be of money in the funds or the like, see *ante*, p. 586. Money in the funds.

If the will be for the purpose of charging the premises with the payment of a sum of money in pursuance of a settlement or other power, (after reciting the settlement as in the preceding note) say, Charge upon land.

“Do charge and make chargeable ALL those, &c. with the payment of the said sum of £_____, unto the said (*trustees*) their executors, administrators, and assigns, upon the trusts, &c. *as above*. AND in further pursuance of the said power or authority, or of some other power or authority enabling me for that purpose, I do hereby devise, limit, and appoint ALL and singular the same messuages, &c. unto them the said (*trustees*) their executors, administrators, and assigns, for the term of _____ years, to be computed from the day of my decease, with such power, authorities, and remedies for recovering, receiving, and raising the said sum of £_____, as in the said in part recited settlement (*or will*) are expressed concerning the same.”

If the will by a wife be merely by the assent of her husband, the words of devise or bequest will be the same as in common wills, without being so framed as to meet the exercise of a power, as, Will by assent of husband.

“I the said (*testator*) do, by and with the express assent of my said husband, testified by his signing his name hereunto, give, devise, and bequeath unto,” &c.

<p>WILLS.</p> <hr/> <p><i>By Feme Covert, or Person under a Power.</i></p> <hr/> <p>Upon trust for mother for life.</p> <p>Husband for life.</p> <p>Children during minority.</p>	<p>the same belonging, shall be and remain unto (<i>trustees</i>); and I do accordingly give and devise the same unto them the said (<i>trustees</i>) and their heirs, upon the several trusts, and to and for the several uses, ends, intents, and purposes herein- after expressed and declared of and concerning the same, (that is to say) IN TRUST (1) to pay the rents, issues, and profits thereof, after deducting the land-tax, and all other charges and outgoings attending the same, unto and her assigns, or otherwise permit or suffer him or them, for her own use and benefit during her natural life; and from and immediately after her decease, then UPON TRUST to pay unto or permit and suffer my said husband to receive the rents and profits thereof during the term of his natural life; and from and after the decease of my said mother and my said husband, UPON FURTHER TRUST that they my said trustees, and the survivors and survivor of them, and his heirs, shall, and do from time to time during the respective minorities of all and every my children, whether now or hereafter to be born, who shall be living at the time of my de- cease, pay and apply the rents, issues, and profits thereof, for and towards their respective main- tenance and education, and use and benefit, in equal proportions, share and share alike, if more</p>
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Variations.

(1) Various other trusts, &c. of property will be found by reference to the margins of the preceding forms, and *vide* WILL in the INDEX.

than one, and if but one, then to pay and apply the whole thereof for and towards the maintenance and education, and use and benefit of such only child, at the discretion of them the said trustees or trustee; and from and immediately after all and every my said children shall have attained their respective ages of twenty-one years, then IN TRUST that they my said (*trustees*) and the survivor of them, and his heirs, shall, and do sell or cause to be sold, the said last-mentioned trust estate for the best price or prices that can or may be had or gotten for the same, and the money arising therefrom or thereby, pay and apply equally to and amongst all and every my said children, share and share alike, (if more than one) and if but one, or but one surviving child, then the whole thereof to such child, for his, her, or their use and benefit, and at his, her, and their respective ages aforesaid. AND in case it shall happen that any of my said children shall die before having attained his, her, or their age or respective ages aforesaid, then my will is, that the part or share, or parts or shares of such child or children so dying, as well in respect of the rents, issues, and profits of the said estates so payable during their respective minorities, as of the said monies arising by sale thereof, shall be equally divided and go and be paid to and amongst the survivors of them, (if more than one) share and share alike, when and as their original shares respectively shall become due and payable as aforesaid, and if but one, then the same to be paid to such only child

WILLIS.

*By Feme Covert,
or Person under
a Power.*

On children
attaining 21,
estates to be
sold, and pro-
duce divided
amongst them.

Survivorship
between them.

WILLS.

*By Feme Covert,
or Person under
a Power.*

*Devise to sisters
as tenants in
common.*

*To husband
in fee.*

*Bequest of
wearing ap-
parel.*

at the time aforesaid; BUT if I shall leave no child or children living at my decease, or if all and every of them shall afterwards die before they or any of them shall have attained their respective ages of twenty-one years, then and in such case

UPON TRUST for, and I hereby give and devise, and limit and appoint the same last mentioned trust premises, and every part thereof, to my sisters, the said and , and their heirs, as tenants in common, and hereby direct my said trustees, and the survivor of them, and his heirs, to release, convey, and assure the same unto and to the use of them the said and , their heirs and assigns accordingly.

AND I direct that if either of them my said sisters shall die in my lifetime, or before she shall become entitled to the premises hereby devised, that the part or share of her so dying, shall go to the survivor of them, her heirs and assigns, and be conveyed and assured to her and her heirs by my said trustees, or the survivor of them, or his heirs accordingly. PROVIDED ALWAYS, that if both my sisters shall happen to die in my lifetime, then I do hereby direct my said trustees, and the survivor of them, and his heirs, to release, convey, and assure the said last mentioned premises unto and to the use of my said husband, his heirs and assigns for ever, to whom in that event I give and devise, and limit and appoint the same. AND I hereby give and bequeath unto my said sisters and , all my wearing apparel which I shall be possessed of or entitled unto at

the time of my decease, to be equally divided between them, or if either of them my said sisters shall happen to die before me, then I give and bequeath the whole thereof to the survivor (1).

WILLS.

By Feme Covert,
or Person under
a Power.

AND as to all the rest, residue and remainder of my estates and effects whatsoever, whether real or personal, not hereinbefore specifically bequeathed or disposed of, subject to and after payment of all my just debts, funeral expenses, and the charges of proving this my will, I hereby devise, bequeath,

Bequest of
residue.

(1) If the power to appoint be of money in the funds, say,

Money in the
funds.

“AND WHEREAS my late husband , (or as the case may be) by his last will and testament in writing, bearing date, &c. gave and bequeathed the sum of £ three per cent. consolidated bank annuities, unto and therein named, upon trust to pay the dividends and interest thereof to me for my natural life, and after my decease, to pay, assign, and transfer the said principal sum unto such person or persons, and for such intents and purposes as I should, by my last will and testament in writing, or any writing in the nature of or purporting to be my last will and testament, or any codicil or codicils thereto, to be respectively by me signed, sealed, and published in the presence of and attested by three or more credible witnesses from time to time, give, bequeath, direct, or appoint the same. Now in pursuance of the powers in me vested in or by the said in part recited will, I the said (*testator*) do, by this my last will and testament, or testamentary writing by me made and executed in the presence of and attested by the two credible persons whose names are hereunder written, direct and appoint, and give and bequeath the said sum of £ three per cent. consolidated bank annuities, unto, &c.” See *ante*, p. 586, *et seq.*

WILLS.

*By Feme Covert,
or Person under
a Power.*

Trustees, &c.
not to be an-
swerable for
each other.

Trustees, &c.
to retain their
expenses.

and dispose of the same, and every part thereof, to my said husband , his heirs, executors, administrators, and assigns. AND I hereby further declare it to be my will, and I do direct that my trustees, or either of them, their or either of their executors and administrators, shall not be responsible or accountable for, or charged or chargeable with more of the aforesaid estates or effects, or the monies arising therefrom, than he or they shall actually receive or shall come to their respective hands by virtue of this my will, or the trusts thereof; nor with or for any loss or reduction which shall or may happen in or to the same, or any part thereof, so as such loss happen without their respective wilful neglect or default; nor the one of them my said trustees or executors for the other of them, or for the acts, deeds, receipts, disbursements, neglect, or default of the others or other of them, but each for himself only. AND ALSO, that it shall and may be lawful for they my said trustees and executors, and each of them, and the survivor of them, and his heirs, at and upon all times and occasions whatsoever, in the first place by and out of my said estates and effects or the monies arising therefrom, to deduct and reimburse himself and themselves respectively, and pay to their respective co-trustees and co-executors, all such costs, charges, and expenses as he, they, or any of them shall sustain, expend, or be put unto in or about the execution of this my will, or the trusts thereof, or any thing in any wise relating

thereto. AND LASTLY, I hereby, in further pursuance of the aforesaid power (1), constitute and appoint the said and , executors of this my last will and testament (2). IN WITNESS, &c. (3).

WILLS.

By Feme Covert,
or Person under
a Power

Appointment of
executors.

(1) Whether executors can be appointed unless authorised by the power, see *Rex v. Buttesworth*, 2 Stra. 89.

(2) Unless the wife exercise her power to make a will, the husband has an exclusive right to administer if he survive her, and if he die before he has received a legacy left to her in his lifetime, the administrator *de bonis non*, &c. will be a trustee for his executors or administrators; see *Humphreys v. Bullen*, 1 Atk. 458.

Husband ad-
ministrator.

(3) Care must be taken that this will be signed, sealed, and attested in the precise manner required by the power of which it is an execution; *vid.* *Longford v. Eyre*, 1 P. Wms. 741. *Rich v. Cockbell*, 9 Ves. 78. *Moodie v. Reed*, 1 Madd. 516, 2 *ib.* 156. *Doe v. Pearce*, 6 Taunt. 402. *Doe dem. Hodgkiss v. Pearce*, 2 Mar. 102; and *ante*, INTRODUCTION (next after p. 696).

Attestation, &c.

WILLS.

Codicil.

No. IV.

A Codicil to a Will.

THIS is a codicil (1) to the last will and testament of me (*the testator*) of, &c. bearing date, &c. {or the above written last will and testament of me, &c.} and which I desire may be considered as annexed to and be taken as part thereof. WHEREAS, &c. (2). Now I do hereby revoke the legacy so given to the said, &c. AND WHEREAS since making my said will, I have purchased an estate in , consisting of, &c. Now I do devise the same estate and premises, with the

Form of codicil.

(1) The form of a codicil is not material, so that it be expressed to be, or be clearly intended as an addition to the testator's will; and it may be used for the purpose of revoking, republishing, adding to, or otherwise varying the dispositions made by such will, or by substituting new executors in the room of any who may have died, &c. since the publication of the will; it is not, however, correct to appoint them originally by this instrument where none were named in the will.

Recital of will.

(2) If an alteration or a revocation be intended to be made in the bequests of the will, it will be proper to recite here the part of the will which is designed to be so altered or revoked. A codicil not being presumed to be a revocation unless it distinctly appear to have been so intended, *Griffith v. Greene*, 1 Jac. and Wal. 33.

appurtenances, to the trustees in my said will named, and their heirs, upon the same trusts, and for the same ends, intents, and purposes as other my estates situated at , are thereby devised to them (1). AND WHEREAS since the making my said will, A. B. one of the executors therein named, has departed this life. Now I do hereby appoint C. D. of, &c. to be an executor of my said will in the room and stead of the said A. B. deceased, and to act in conjunction with the other of my executors in the said will named. Also I give and bequeath to , of, &c. the sum of £ , &c. &c. IN WITNESS, &c.

WILLS.

Codicil.

(1) A codicil must be published and attested in the same manner as a will devising or bequeathing the same species of property, see *ante*, "INTRODUCTION TO WILLS," (next after p. 696).

WILLS.

*Nuncupative
Will.*

No. V.

A Nuncupative Will.

BE it known to all whom it may concern, that
 (the testator) of, &c. deceased, on the
 day of , at or about of the
 clock in the afternoon, being then weak in body,
 and in his last sickness, but of sound mind, did,
 in the presence of us whose names are hereunder
 written, declare his will to be as follows, (that is
 to say) He gave and bequeathed unto his dear
 wife , the sum of £ to be paid her
 within one calendar month next after his death.
 AND he gave and bequeathed unto , of,
 &c. the sum of £ , &c. &c. AND he named
 and appointed , of, &c. , executor of
 his said will. AS WITNESS our hands, this
 day of .

(three persons) (1).

Form of nuncu-
pative will.

(1) It will be proper, in all cases, that a nuncupative will should be put into writing and signed by the witnesses within six days after the testator's death, see 29 Car. II. c. 8, and *ante*, INTRODUCTION to WILLS, (next after p. 696).

END OF THE SERIES.



